United States Court of Appeals

for the Second Circuit

APPENDIX

affidavit of Service

75-2140

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CHARLES SNYDER,

Plaintiff-Appellee,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TERNULLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants-Appellants

B
P/S

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX



LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-Appellants
Office & P.O. Address
Two World Trade Center
New York, New York
Tel. #(212) 488-3447

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UNITED STATES DISTRICT COURT

Jury demand date: 6:: Civ 5505

. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
CHARLES SNYDER VS. PETER PREISER, INDIVIAUALLY AND IN HIS CAPACITY AS COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, VINCENT TURNELLO, INDIVIDUALLY AND IN HIS CAPACITY AS SUPERINTENDENT OF FISHKILL CORRECTIONAL FACILITY, AND ROY BOMBARD, INDIVIDUALLY AND IN HIS CAPACITY AS DEPUTY SUPERINTENDENT OF FISHKILL CORRECTIONAL FACILITY,	For plaintiff: MONROE COUNTY LEGAL ASSISTANCE CORP. 50 MARKET STREET, POUGHKEEPSIE, N.Y. 12601 914- 452-7311 For defendant:

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed X	Clerk			[illegible]	IFP				
J.S. 6 mailed ✓	Marshal								
Basis of Action: CIVIL RIGHTS.	Docket fee								
	Witness fees								
Action arose at:	Depositions								

CHARLES SNYDER, ETC. VS. PETER PREISER, INDIVIDUALLY, ETC. ET AL

74 Civ. 5597

DATE	PROCEEDINGS	Date Order Judgment N
Dec19-74	Filed Complaint, Issued Summons.	✓
Dec19-74	Filed Order permitting the pltff to proced in forma pauperis, etc. Carter, J.	✓
Dec19-74	Filed Orde r that Jane E. Bloom and Eugene Anderson are hereby appointed to serve the summons and complaint in the above mentioned case, Clerk.	✓
Jan. 7-75	Filed defts' affdvt. of David L. Birch and notice of motion for an order dismissing the complaint.	✓
Jan. 7-75	Filed defts' memorandum of law in opposition to pltff's motion for a preliminary injunction and in support of defts' motion to dismiss.	✓
Jan. 8-75	Filed pltff's notice of motion for an order for preliminary injunction. Ret. 1-8-75	✓
Jan. 8-75	Filed pltff's memorandum of law in support of motion for preliminary injunction.	✓
Jan. 8-75	Filed pltff's affdvt. of service by an individual- served: Vincent Turnello, personally, on 12-20-74 Ray Bombard by Vincent Turnello on 12-20-74	✓
Jan. 22-75	Filed Order- the court orders that an evidentiary hearing be held on 2-7-75 at 2:30 P.M. on the issues as indicated. The parties are directed to notify and produce all appropriate witnesses etc. as indicated. So ordered- MOTLEY, J. (m/n)	✓
May 7-75	Filed pltff's supplemental affdvt. in support of preliminary injunction.	✓
May 8-75	Filed pltff's affdvt. of Jane E. Bloom in support of writ of habeas corpus ad testificandum.	✓
May 29-75	Filed Writ of Habeas Corpus ad testificandum as to pltff. Charles Snyder and marshal's return.	✓
May 15-75	Before MOTLEY, J. non-jury trial begun.	
May 16-75	trial cont'd	
May 19-75	trial cont'd and consolidated with motion for preliminary injunction. Judge's decision reserved.	
June 6-75	Filed pltff's trial brief.	✓
[illegible]	Filed transcript of record of proceedings, dated [illegible]	✓
10-19-75	Filed Findings of Fact and Conclusions of Law -Opinion No.43092 for the reasons states.....Pltff is ordered returned to the Work Release program at Fishkill until such time as he is removed pursuant to the regulations and due process.All records of his unlawful transfer are ordered expunged.Sumbit order on 5 days' notice.MOTLEY,J (m-n)	✓
10-21-75	Filed Order re:Pltff's motion for preliminary injunction & defts' motion to dismiss.Ordered defts permanently enjoined from refusing to return Pltff to Work Release Program etc.Ordered that defts not remove Pltff from Work Release Program etc.Ordered that defts expunge all records of Pltff,etc. and Ordered that defts'request for a stay of this order be, and hereby is, denied.MOTLEY,J (m-n)	✓
10-28-75	Filed defts' notice of appeal to USCA from the order filed 10-21-75 enjoing the defts. from refusing to return pltff to the Work Release Program, etc. as indicated and fromeach and every part thereof. Copy to: Jane E. Bloom, Esq. Ent. 10-29-75	✓
11-25-75	Filed Verified petition of Jane Ellen Bloom, dated Dec. 27-74, request pro hac vice admission as counsel in this matter.	
11-25-75	Filed Post-Trial Memo. of Law in behalf of deft. dated May 30-75.	
11-25-75	Filed Answer of defendants, dated May 30-75.	
11-25-75	Filed Affidavit of defendants re: Temporary Release Committee, dated May 30-75.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [illegible] Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

74 CIV NO 5597

To the above-named Defendants:

Please take notice that the Plaintiff will bring on for hearing in Room 618 of the United States Courthouse, Foley Square, New York, New York, on the 6th day of January, 1975, at 10 AM o'clock, or as soon thereafter as counsel can be heard, the attached motion for a preliminary injunction.

Please take further notice that opposing affidavits and answering memoranda must be served upon counsel for Plaintiff at least three days before the return day of this motion.

Jane E Bloom

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiff
50 Market Street
Poughkeepsie, New York 12601
John D. Gorman, of Counsel
Jane E. Bloom, of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

MOTION FOR A PRELIMINARY INJUNCTION



Upon the verified complaint herein and upon the attached affidavits of Charles Snyder and Jane E. Bloom, Plaintiff moves the court for a preliminary injunction, as prayed for in the said complaint and on the grounds therein set forth.

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiff
50 Market Street
Poughkeepsie, New York 12601
John D. Gorman, of Counsel
Jane E. Bloom, of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

State of New York)
County of Dutchess) ss.:

CHARLES SNYDER, being duly sworn deposes and says:

1. I am the Plaintiff in this action and submit this affidavit in support of a motion for a preliminary injunction.

2. I am currently incarcerated at Greenhaven Correctional Facility, Stormville, New York.

3. From August 2, 1973 to April 14, 1974 I was incarcerated at Fishkill Correctional Facility. At Fishkill I participated in a Work Release Program and attended Dutchess Community College, taking courses leading to a nursing degree.

4. At the March 27, 1974 meeting of the Temporary Release Committee, my hearing problems made it very difficult for me to understand the discussion and questions of the members of the Committee. My hearing problem also made it difficult for me to collect and present the evidence necessary for an adequate defense of my case.

5. On April 15, 1974, I was transferred from Fishkill to Greenhaven Correctional Facility without a hearing in compliance with the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as is more fully described in my Complaint.

6. At Greenhaven I am unable to attend Dutchess Community College and participate in the nursing degree program.

7. If I am not transferred back to Fishkill:

(a) I will be unable to enroll in the Dutchess Community College spring semester beginning the end of January;

(b) I will be unable to participate in programs sponsored by the office of Vocational Rehabilitation to aid my hearing;

(c) My parole eligibility will be adversely affected;

(d) I will be subjected to constant harassment by guards and other prisoners regarding my hearing problems.

s/ Charles Snyder
CHARLES SNYDER

Subscribed and sworn
to before me

December 18, 1974

s/ Jane Ellen Blow
JURAT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

AFFIDAVIT

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

JANE E. BLOOM, being duly sworn, deposes and says:

1. I am Staff Attorney at the Poughkeepsie office of the Mid-Hudson Valley Legal Services Project, Monroe County Legal Assistance Corporation, attorneys for the Plaintiff, with offices at 50 Market Street, Poughkeepsie, New York.

2. I submit this affidavit in support of Plaintiff's motion for a preliminary injunction.

3. On April 14, 1974, Plaintiff Snyder was transferred from Fishkill Correctional Facility to Greenhaven Correctional Facility for disciplinary reasons.

4. As a result of this transfer, Plaintiff Snyder's freedom of movement was severely restricted. Fishkill is a minimum-to-medium security prison. At Fishkill Plaintiff Snyder enjoyed freedom of movement within the institution. His room was not locked. He could walk through the grounds. He participated in Work Release Programs and attended Dutchess Community College's nursing program. At Greenhaven, Plaintiff Snyder moves from his cell to school programs to meals and to assignments. He has no other freedom of movement. His cell is locked.

5. Plaintiff Snyder was transferred from Fishkill to Greehaven without a due process hearing in compliance with the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE your deponent prays that this court enter the following:

(a) Return Plaintiff to Fishkill:

(b) Place Plaintiff in the general population at Fishkill;

(c) Place Plaintiff in the Work Release Program at Fishkill so that Plaintiff may attend Dutchess Community College's

spring term beginning February, 1975, and continue his nursing program;

(d) Purge and remove from all records under Defendants' control any and all references to Plaintiff's transfer from Fishkill to Greenhaven;

Jane E. Bloom
JANE E. BLOOM

Sworn to before me

December 18, 1974

s/ John D Rowe
JURAT

AIL
DEC 30 1974
DEPARTMENT OF LAW
NEW YORK CITY OFFICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE MOTLEY

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

COMPLAINT
Civil Action File No.
74-5597

I.

PRELIMINARY STATEMENT

1. Plaintiff seeks damages and declaratory and injunctive relief challenging his punitive transfer by the Defendants from Fishkill Correction Facility to Greenhaven Correctional Facility on the grounds that such punishment was imposed without due process and in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

II

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U. S.C. Section 1343 (3), (4) which provides for original jurisdiction of this Court in all suits authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States and 28 U.S.C. 1331 as the matter in controversy exceeds $10,000 and arises under the Constitution of the United States.

3. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. Section 2201, 2202, and Rule 57 of the Federal Rules of Civil Procedure.

III

PARTIES

4. Plaintiff Charles Snyder, a citizen of the United States and the State of New York, is an inmate at the Greenhaven Correctional Facility in Stormville, New York (hereinafter Greenhaven), who was transferred there from the Fishkill Correctional Facility in Beacon, New York (hereinafter Fishkill).

Plaintiff Snyder is deaf. With the aid of a proper hearing aid, he is able to distinguish most sounds.

5. Defendant Peter Preiser is the Commissioner of the New York State Department of Correctional Services. He is responsible for the promulgation and approval of rules governing the supervision and management of all New York State prisons including Greenhaven and Fishkill, pursuant to New York Correction Law Section 112. Defendant Preiser also defines and directs the work and duties of all officers and subordinates of New York State prisons.

6. Defendant Vincent Turnello is the Superintendent of Fishkill Correctional Facility. As such, he has control of the direction and management of that facility subject only to the rules promulgated by and the statutory duties vested in Defendant Preiser. Defendant Turnello directs the work and defines the duties and responsibilities of all officers and subordinates at Fishkill.

7. Defendant Ray Bombard is the Deputy Superintendent of Fishkill Correctional Facility. In the spring of 1974, prior to Defendant Turnello's appointment as Superintendent on June 6, 1974, Defendant Bombard functioned as the Acting Superintendent of Fishkill Correctional Facility. As such, he had the responsibilities and powers of the Superintendent as set forth in Paragraph 6.

IV

FACTUAL ALLEGATIONS

8. From August 2, 1973 to April 14, 1974, Plaintiff Snyder was incarcerated at Fishkill.

9. At Fishkill, the Plaintiff participated in the Work Release Program from September 1973 to March 25, 1974. As a participant in the Work Release Program at Fishkill, Plaintiff Snyder attended Dutchess Community College each day and took courses leading to a nursing degree.

10. At Fishkill, a medium security prison, Plaintiff Snyder had opportunities to move freely within the grounds.

11. To attend school each day, Plaintiff Snyder drove a car provided by the Department of Corrections from Fishkill to Dutchess Community College in Poughkeepsie, New York, and then back to Fishkill. Plaintiff drove himself and about nine other participants in the Work Release Program. The Plaintiff was responsible for leaving these other men off at their work or school locations in the morning and picking them up in the evening to return to Fishkill. The Plaintiff's evening arrival time at Fishkill was dependent upon the schedules of the other participants in the Work Release Program.

12. On February 10, 1974, the Dutchess County Chapter of the Heart Fund sponsored a blood drive at Dutchess Community College. Plaintiff Snyder and other nursing students were invited to attend the blood drive to assist in the program. Plaintiff

Snyder was granted permission by officials at Fishkill to attend this event.

13. Plaintiff Snyder received B's and C's in the Dutchess Community College nursing program.

14. On March 22, 1974 when Plaintiff Snyder arrived at Dutchess Community College, he was requested by a friend to drive her two children to school because they had missed their school bus. While driving the children to school, Plaintiff Snyder received a speeding ticket in the Town of Pleasant Valley. Plaintiff Snyder made arrangements to pay the fine and returned to school.

15. From March 23 to March 25, 1974, Plaintiff Snyder participated in the Work Release Program at Dutchess Community College.

16. On March 26, 1974, Plaintiff Snyder was placed on a 'hold' status at Fishkill and was not permitted to attend Dutchess Community College.

17. On March 27, 1974, Plaintiff Snyder appeared before the Temporary Release Committee at Fishkill.

18. Upon information and belief, this Committee was composed of Mr. Anthony DaSilva, Program Coordinator and about two other officers. Plaintiff Snyder was given no information regarding the powers and duties of this Committee.

19. Plaintiff Snyder appeared before the Temporary Release Committee without being given the following minimal due process protections by the Defendants in violation of the Fifth, Sixth, and ~~Fourteenth~~ Amendments to the United States Constitution:

(1) A written statement of the charges against him at least 24 hours before the hearing;

(2) A written statement of the facts underlying the charges and the reasons for the disciplinary action so that he might prepare a defense;

(3) A written statement of the rules governing disciplinary hearings;

(4) The opportunity to call witnesses and present documentary evidence on his behalf;

(5) The right to the assistance of counsel or a counsel-substitute who could apprise Plaintiff of his rights, and assist him in the preparation of a defense to the charges, since it was unlikely that Plaintiff, a deaf person, would be able to collect and present the evidence necessary for an adequate comprehension of this case;

(6) A written statement of the Committee's decision;

20. At the March 27, 1974, meeting of the Temporary Release Committee, Plaintiff Snyder had difficulty hearing the questions and discussion that transpired.

21. From August 2, 1973 to April 14, 1974, Plaintiff Snyder made repeated requests for a hearing examination so that he might be fitted with the proper hearing aid. On December 26, 1973, Plaintiff Snyder was examined for a hearing aid and a new hearing aid was prescribed for him.

22. Plaintiff Snyder never received this hearing aid while he was incarcerated at Fishkill. He received the hearing aid on November 14, 1974, after his attorney made repeated inquiries to Dr. Frank at Greenhaven.

23. As a result of the Temporary Release Committee's meeting of March 27, 1974, Plaintiff Snyder was punished as follows:

(1) On April 15, 1974, Plaintiff Snyder was transferred from Fishkill to Greenhaven as a disciplinary measure and placed in segregation, 23 hour lock-up for ten days;

(2) Whereas prior to March 27, 1974, Plaintiff Snyder participated in the Work Release Program and attended Dutchess Community College each day, for the period of March 27, 1974 to April 14, 1974, he was confined to Fishkill.

(3) Plaintiff Snyder was removed from the Work Release Program and deprived of the right to attend Dutchess Community College and participate in the nursing program;

24. Plaintiff's transfer has adversely affected his eligibility for furloughs.

25. Upon information and belief, Plaintiff's transfer will adversely affect his parole eligibility because the Parole Board is less willing to release prisoners who have been punitively transferred.

26. Plaintiff's transfer has made it difficult for his family and friends to visit him.

27. Plaintiff's transfer has made it impossible for him to use the telephone to communicate with his family. At Fishkill, the phone was fitted with a special earpiece that made it possible for individuals with hearing problems to use the telephone. The telephones at Greenhaven are not adapted for individuals with hearing problems.

28. Plaintiff's transfer in the middle of the spring semester at Dutchess Community College deprived him of the opportunity to complete his spring courses and obtain credit towards his nursing degree.

29. Plaintiff's transfer has severely limited his educational opportunities.

30. Plaintiff's transfer to Greenhaven, a maximum security institution, has severely limited his freedom of movement.

31. Plaintiff's transfer has made it impossible for him to participate in programs sponsored by the office of Vocational Rehabilitation. This office assisted him in hearing problems while he was at Fishkill.

32. Plaintiff has exhausted his administrative remedies in that Plaintiff's counsel has made written requests to Defendant Preiser (Exhibit A) Leonard Witt (Exhibit B), and Anthony DaSilva (Exhibit C) requesting that a hearing be conducted regarding his transfer from Fishkill to Greenhaven in compliance with the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

33. On November 13, 1974, Anthony DaSilva made a written denial to the request in paragraph 32. (Exhibit D)

34. On December 12, 1974, Defendant Preiser made a written denial to the request in paragraph 32. (Exhibit E)

35. Plaintiff has no plain or adequate remedy to redress the wrongs and unlawful acts complained of herein in the absence of the declaratory and injunctive relief sought in this action.

V

FIRST CAUSE OF ACTION

36. Plaintiff restates, realleges, and incorporates each and every allegation in paragraphs 1-35.

37. The Fifth and Fourteenth Amendments to the United States Constitution provide that no state shall "deprive any person of life, liberty, or property without due process of law".

38. The Defendants violated Plaintiff Snyder's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution by transferring the Plaintiff from Fishkill, a medium security prison, to Greenhaven, a maximum security prison, without affording the Plaintiff a hearing with the due process protections enumerated in paragraph 19.

VI

SECOND CAUSE OF ACTION

39. Plaintiff restates, realleges, and incorporates each and every allegation in paragraphs 1-38.

40. The Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall...have the assistance of Counsel for his defense".

41. The Defendants violated Plaintiff Snyder's right to counsel under the Sixth Amendment to the United States Constitution by transferring the Plaintiff from Fishkill to Greenhaven without affording the Plaintiff, a deaf individual, with the right to counsel or a counsel substitute so that he might be able to collect and present the evidence necessary for an adequate comprehension of his case.

VII

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

42. That the Court enter a declaratory judgment pursuant to Title 28 U.S.C. Section 2201 declaring the acts, practices, and procedures complained of in this complaint as violative of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution;

43. That the Court enter a preliminary injunction, later to be made permanent ordering Defendants to:

(a) Return Plaintiff to Fishkill;

(b) Place Plaintiff in the general population at Fishkill;

(c) Place Plaintiff in the Work Release Program at Fishkill so that Plaintiff may attend Dutchess Community College's spring term beginning February, 1975, and continue his nursing program;

(d) Purge and remove from all records under Defendants' control any and all references to Plaintiff's transfer from Fishkill to Greenhaven;

44. That the Plaintiff be compensated for the wrongful and arbitrary punishment he suffered in the amount of $5,000 compensatory and $5,000 punitive damages against the Defendants jointly and severally.

45. That the Court order Defendants to pay and reimburse Plaintiff for Court costs, expenditures, and reasonable counsel fees; and

46. That the Court order such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Jane E. Bloom

MID-HUDSON VALLEY LEGAL SERVICES PROJ.
(Monroe County Legal Assistance Corp.)
50 Market Street
Poughkeepsie, New York 12601
Attorneys for Plaintiff
John D. Gorman, of Counsel
Jane E. Bloom, of Counsel

DATED: Poughkeepsie, New York
December 19, 1974

November 6, 1974

Commissioner of Correctional Services
Department of Correctional Services
Albany, New York 12225

Dear Sir:

I am writing regarding the transfer of Charles Snyder from Fishkill Correctional Facility Study Release Program to Greenhaven Correctional Facility on April 17, 1974. It appears that Mr. Snyder was transferred from Fishkill, a minimum security prison, to Greenhaven, a maximum security institution without a prior hearing. Courts have recently and uniformly required that a due process hearing is necessary prior to such a transfer. See Newkirk v. Butter, 364 F. Supp. 497 (S.D.N.Y. 1973)

I request that a hearing be conducted regarding Mr. Snyder's transfer. I request that Mr. Snyder be furnished with written notice of the reasons for the transfer in advance of the hearing; be afforded the right to call witnesses and present documentary evidence, be afforded the right to be represented by an attorney at the hearing) and be afforded a written statement of the decision.

Yours truly,

JANE E. BLOOM
Staff Attorney

JEB:JSL

EXHIBIT A 24

November 6, 1974

Leonard Witt
Director, Community Services
Department of Correctional Services
State Office Building
Campus Bldg. 2.
Albany, New York 12226

Dear Mr. Witt:

I am writing regarding the transfer of Charles Snyder from Fishkill Correctional Facility Study Release Program to Greenhaven Correctional Facility on April 17, 1974. It appears that Mr. Snyder was transferred from Fishkill, a minimum security prison, to Greenhaven, a maximum security institution without a prior hearing. Courts have recently and uniformly required that a due process hearing is necessary prior to such a transfer. See Newkirk v. Butter, 364 F. Supp. 497 (S.D.N.Y. 1973)

I request that a hearing be conducted regarding Mr. Snyder's transfer. I request that Mr. Snyder be furnished with written notice of the reasons for the transfer in advance of the hearing; be afforded the right to call witnesses and present documentary evidence, be afforded the right to be represented by an attorney at the hearing, and be afforded a written statement of the decision.

Yours truly,

/s/

JANE E. BLOOM
Staff Attorney

JEB:JSL

EXHIBIT B

31 SO. MAIN ST.
LIBERTY, N. Y. 12754
(914) 292-6600

34 SOUTH STREET
MIDDLETOWN, N. Y. 10940
(914) 343-0831

MONROE COUNTY LEGAL ASSISTANCE CORPORATION

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
50 MARKET STREET, POUGHKEEPSIE, N. Y. 12601
TEL: (914) 452-7911

HENRY J. STEINGLASS
PROJECT DIRECTOR

January , 1974

Mr. Anthony DaSilva
Head Work Release Program
Fishkill Correctional Facility
Fishkill, New York

Dear Mr. DaSilva:

I am writing regarding the transfer of Charles Snyder from Fishkill Correctional Facility Study Release Program to Greenhaven Correctional Facility on April 17, 1973. It appears that Mr. Snyder was transferred from Fishkill, a minimum security prison, to Greenhaven, a maximum security institution without a prior hearing. Courts have recently and uniformly required that a due process hearing is necessary prior to such a transfer. See Morrissey v. Curran, 368 F. Supp. 497 (S.D.N.Y. 1973)

I request that a hearing be conducted regarding Mr. Snyder's transfer. I request that Mr. Snyder be furnished with written notice of the reasons for the transfer in advance of the hearing; be afforded the right to call witnesses and present documentary evidence, be afforded the right to be represented by an attorney at the hearing, and be offered a written statement of the decision.

Yours truly,

JJJ:JJL

EXHIBIT C

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

FISHKILL CORRECTIONAL FACILITY

BEACON, N. Y. (12508)

AREA CODE 914-831-4800

"CORRECTION"

RECEIVED
NOV 15 1974
DUTCHESS CO.

November 13, 1974

Ms. Jane Bloom - Staff Attorney
Mid Hudson Valley Legal Services Project
50 Market Street
Poughkeepsie, New York 12601

RE: Charles Snyder WR 26

Dear Ms. Bloom:

This is in reply to your letter of November 6, 1974 regarding Mr. Snyder.

Mr. Snyder is apparently claiming that he was transferred from the Work Release Program, to the Green Haven Correctional Facility, without receiving a prior hearing. That claim is incorrect.

On March 26, 1974 a report was submitted to the Temporary Release Committee by Mr. Snyder's parole officer, Mr. Guempel. Mr. Guempel advised that Mr. Snyder had violated his bounds of confinement agreement on March 22, 1974 and had also received a speeding ticket on March 22 in the Town of Pleasant Valley.

Mr. Snyder was placed on a "hold" on the evening of March 26 and was seen by the Temporary Release Committee on March 27, 1974. At that time Mr. Guempel's report was discussed with him. Mr. Snyder admitted that on March 22, 1974 he had left his restricted area and had gone to the home of a female friend in Pleasant Valley. He claimed that his behavior in that instance was based on "humanitarian" grounds. Mr. Snyder also admitted that he had received a speeding ticket on March 22 but did not notify his parole officer of this. The committee, upon hearing Mr. Snyder's statements and upon review of his general adjustment in the program, recommended that he be removed from the Work Release Program. This decision was later discussed with Snyder in a conference with his parole Officer.

Mr. Snyder did not receive any written statement of charges nor did he receive a written statement of the committee decision. However he was well aware of the charges and of the subsequent decision of the committee.

EXHIBIT D
27

In a letter to Congressman Benjamin Gilman dated April 9, 1974, Mr. Snyder states that "Upon being brought to the Temporary Release Committee, I was dropped from the program. . ." In that same letter Mr. Snyder admits that the charges were read to him, admits that he had gone to the home of a fellow student and admits that he had received a speeding ticket. He questioned the decision of the committee in recommending that he be removed from the program. It was evident from Mr. Snyder's letter that he was well aware of why he was removed from the program and that this information had been supplied to him.

On April 15, 1974 Mr. Snyder was transferred to the Green Haven Correctional Facility. Between March 27, 1974 when he saw the Temporary Release Committee, and April 15, 1974, when he was transferred, the following steps were taken. A written report was submitted, by myself, to the Superintendent of the Fishkill facility. This report outlined in detail Mr. Snyder's background in the Work Release Program, noted several instances, including the one of March 22, 1974, in which he had violated several program regulations, noted the actions that we took in each of these instances and concluded with the recommendation of the Temporary Release Committee that Mr. Snyder be removed. Copies of this report were sent to Mr. Witt, the Director of Community Services, Mr. Atkinson, his assistant, Deputy Commissioner Baker and Senior Parole Officer Kennedy.

The Superintendent approved the recommendation of the committee and sent a copy of the report, together with a transfer request, to the Classification and Transfer section located in Albany. There the transfer was approved and Mr. Snyder was transferred to Green Haven.

During this time Mr. Snyder was also seen by his parole officer and correction counselor on several occasions. He spoke with them concerning his feelings about the transfer and was constantly stating that his actions were justified. I also personally spoke with Mr. Snyder on at least one occasion and had a lengthy conversation, of over one hour, with Mr. Snyder's friend, Mrs. Herman. In my conversation with Mrs. Herman I went into detail concerning Mr. Snyder's behavior while in the Work Release Program and the reasons for our recommendation for removing him from that program. All of this activity took place prior to Mr. Snyder's transfer from this facility.

In my telephone contact with you on November 12, 1974, you advised that there was no indication in Mr. Snyder's folder that a hearing had been held. I checked further and the report that I submitted is in Mr. Snyder's parole folder at Green Haven. Each inmate has both a service folder and a parole folder. The copy of the report that was sent to Senior Parole Officer Kennedy was put by Mr. Kennedy into the parole folder.

Following recent court decisions we have made some changes in our procedures in similar situations. Each inmate is now provided with a written statement of the charges being brought against him. These charges are discussed with him by a correction counselor and at that time he signs a statement that he has received a copy of the written charges. A date is then set for a hearing by the Temporary Release Committee. This hearing is usually set for at least 24 hours from the time he receives the charges. The date is included in the statement the inmate receives.

Following the committee hearing the inmate is given a written statement advising him of the committee's decision. This statement is signed by all three members of the committee and is given to him by his correction counselor. At that time the inmate signs a receipt for that statement.

With respect to Mr. Snyder's present situation, I do not believe that giving him another hearing would be meaningfull. The circumstances have not changed, he did violate program regulations on several occasions and had admitted to violating those regulations, he did receive a hearing, he was advised of the charges, he had ample opportunity to reply to them and he was notified of the committee decision.

I can understand Mr. Snyder's feelings that he would like to continue with his education. There are several options that are open to him. He can apply for readmission into Work Release. In this instance the request would have to be approved by the Temporary Release Committee and the Superintendent at his present facility. If they approve of this request, Central Office in Albany would have to give final permission.

Mr. Snyder can also apply for educational leave. If he applies for educational leave, the request would have to be approved by the Temporary Release Committee and the Superintendent at Green Haven and by Central Office in Albany.

I suggest these alternatives not because I believe that Mr. Snyder will meet his responsibilities in a satisfactory manner, but simply because they are available. The decision as to whether he could participate would be up to the personnel at Green Haven or Albany.

Should you have any further questions regarding Mr. Snyder's situation, please do not hesitate to contact me.

Yours truly,

Anthony DaSilva
Program Coordinator

ldf

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STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
ALBANY, N.Y. 12226

PETER PREISER
COMMISSIONER

December 12, 1974

Ms. Jane E. Bloom
Staff Attorney
Mid-Hudson Valley Legal Services
Project
50 Market Street
Poughkeepsie, New York 12601

Dear Ms. Bloom:

This is in response to your recent letter concerning Mr. Charles Snyder, #143037 at Green Haven.

Mr. Snyder met the Temporary Release Committee at Fishkill in March of 1974 and the reasons for his removal from the Work Release Program were discussed with him at that time. He had also met with the Committee on several earlier occasions to discuss other violations of his Work Release Program.

We note that the Newkirk decision dealt with the transfer of an inmate from a minimum security facility to a maximum security facility. Referring to the statement in your letter, Fishkill is a medium, not a minimum security facility. 7 NYCRR-100.91. Further, as you know the Newkirk decision is being appealed.

We believe that Mr. Snyder's transfer was appropriate and not violative of due process considerations.

Sincerely,

Edward R. Patrick

Edward R. Patrick
Special Assistant
to
the Commissioner

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

AFFIDAVIT

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

CHARLES SNYDER, being duly sworn, deposes and says that he is incarcerated at Greenhaven Correctional Facility, Stormville, New York; that he is a plaintiff herein; that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge.

s/ Charles Snyder
CHARLES SNYDER

Subscribed and
Sworn to before me

December 18, 1974

Joe Ellen Blair
JURAT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

----------X

NOTICE OF MOTION

74 Civ. 5597
C.B.M.

S I R S :

PLEASE TAKE NOTICE that upon the complaint herein, dated December 19, 1974, and the annexed affidavit of DAVID L. BIRCH, Deputy Assistant Attorney General of the State of New York, sworn to the 6th day of January, 1975, the undersigned will move this Court before Judge Motley, at Room 2804, at 2:00 in the afternoon or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the complaint for failure to state a claim upon which relief can be granted, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 6, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

DAVID L. BIRCH
Deputy Assistant Attorney
General
Office & P.O. Address
Two World Trade Center
New York, New York 10047

TO: MS. JANE E. BLOOM
Attorney for Plaintiff
Mid-Hudson Valley Legal Services
Project
(Monroe County Legal Assistance Corp.)
50 Market Street
Poughkeepsie, New York 12601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER, Plaintiff, -against- PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility, Defendants.	AFFIDAVIT 74 Civ. 5597 C.B.M.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DAVID L. BIRCH, being duly sworn, deposes and says:

1. I am a Deputy Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for defendants herein. I submit this affidavit in opposition to plaintiff's application for a preliminary injunction and in support of defendants' motion to dismiss the complaint for failure to state a claim upon which relief can be granted.

2. Plaintiff is presently incarcerated in the Green Haven Correctional Facility, Stormville, New York, pursuant to a judgment of conviction of the Nassau County Court (Kelly, J.) for the crime of manslaughter first degree. Plaintiff was sentenced on February 28, 1969 to a maximum sentence of 15 years.

3. In his complaint of December 19, 1974, his affidavit and the affidavit of his attorney in support of a motion for preliminary injunction both sworn to December 18, 1974, and his attorney's memorandum of law, plaintiff alleges that he was denied due process of law because, with regard to his hearing of March 27, 1974 that resulted in his transfer from the Fishkill Correctional Facility to Green Haven Correctional, he was not provided with a written statement of the charges against him at least 24 hours prior to the hearing; he was not provided a written statement of the facts underlying the charges and the reasons for the disciplinary action so that he could prepare a defense; he was not provided a written statement of the rules governing disciplinary hearings; he was not given an opportunity to call witnesses and present documentary evidence in his behalf; he was not permitted counsel or a counsel substitute; and he was not provided a written statement of the Committee's decision.

Plaintiff also alleges that his hearing difficulties made it imperative that he be provided with counsel or a counsel substitute at the hearing of March 27, 1974 and that lack of counsel violated his rights under the Sixth Amendment to the United States Constitution. In paragraph 4 of the complaint, plaintiff states that "[w]ith the aid of a proper hearing aid, he is able to distinguish most sounds."

4. On information from Mr. Anthony Da Silva, Program Co-ordinator, Work Release Program, Fishkill Correctional Facility, the plaintiff was transferred to the Work Release Program at Fishkill Correctional Facility on August 31, 1973. His adjustment to the program was considered marginal at best. Plaintiff was involved in several infractions of the rules.

These infractions are detailed in a Parole Summary, a copy of which is attached hereto as Exhibit A, a memo to plaintiff from the Temporary Release Committee, dated February 15, 1974, a copy of which is attached hereto as Exhibit B, a memo to Mr. Da Silva from Parole Office Guempel, dated March 26, 1974, a copy of which is attached hereto as Exhibit C, a memo to Dr. Agnew then Director of Fishkill Correctional Facility from Mr. Da Silva, dated April 3, 1974, a copy of which is attached hereto as Exhibit D, and a memo to plaintiff from Mr. Da Silva, dated March 29, 1974, a copy of which is attached hereto as Exhibit E.

Plaintiff was well aware of each infraction and met the Temporary Release Committee in January, 1974. On February 10, 1974, plaintiff was warned that further violations of the regulations of the Work Release Program would probably result in his being removed from the program.

Plaintiff was orally advised of the culminating charges on March 27, 1974. On that date he was provided a hearing by the Temporary Release Committee. At that hearing, plaintiff admitted the actions in issue and admitted knowing that the actions violated the bounds of his confinement agreement. He was informed orally of the Committee's decision.

5. Although plaintiff was removed from the Work Release Program in March, 1974 and transferred to Green Haven Correctional Facility in April, 1974, plaintiff's attorney did not protest his transfer to the officials of the New York State Department of Correctional Services until November, 1974.

6. It should be noted that although plaintiff alleges that his hearing was insufficient to understand what occurred at the hearing of March 27, 1974, his hearing was sufficient for attending classes at Dutchess County Community College and for driving.

7. It is defendants' position that plaintiff's transfer was proper and that it was attended by all necessary constitutional safeguards and, therefore, that plaintiff's motion for a preliminary injunction should be denied and the complaint dismissed for failure to state a claim upon which relief can be granted. This argument is more fully developed in the accompanying memorandum of law.

WHEREFORE, defendants respectfully request that plaintiff's motion for a preliminary injunction be denied and that their motion to dismiss the complaint for failure to state a claim be granted.

DAVID L. BIRCH

Sworn to before me this
6th day of January, 1975

Assistant Attorney General
of the State of New York

The exhibits to the motion to dismiss were introduced as various exhibits at the trial and are included in this record as trial exhibits.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

Civ. No. 74-5597

CHARLES SNYDER, being duly sworn deposes and says:

1. I am the Plaintiff in this action and submit this affidavit in support of a motion for a preliminary injunction.

2. I submit this affidavit to further clarify the procedures utilized by the defendants in effecting my transfer from Fishkill Correctional Facility to Greenhaven Correctional Facility.

3. As an inmate at Fishkill Correctional Facility, the defendants never informed me in a written or oral manner that I would be transferred to a more secure institution if I exceeded the bounds of my confinement.

4. Upon information and belief, I was transferred from Fishkill to Greenhaven because of a series of alleged violations of alleged Work Release regulations. I never received a due process hearing regarding these alleged violations in accordance with the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

5. Upon information and belief, defendants have alleged that I was seen by the Temporary Release Committee January, February, and March of 1974.

6. I was never seen by the Temporary Release Committee in February, 1974.

7. In January and March, 1974, I appeared before the Temporary Release Committee without receiving minimal due process protections. I never received written or oral notice of the charges before the meeting. I was never given an opportunity to call witnesses or present evidence. I was never given written or oral notice of the Committee's decision.

8. I have valid defenses to the defendant's charges that I violated Work Release regulations. I was never able to assert these defenses because I was denied minimal due process.

9. I request that I be returned to Fishkill Correctional Facility so that I might resume my nursing studies

at Dutchess Community College in January, 1975.

CHARLES SNYDER

Sworn and subscribed to

before me this 14th day of

January , 1975.

JANE ELLEN BLOOM
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN DUTCHESS COUNTY
COMMISSION EXPIRES MARCH 30, 1976

(33)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 22 1975
S.D. OF N.Y.
W.A.

CHARLES SYNER,

Plaintiff,

-against-

74 CIV. 5597

PETER PREISER, et al.,

Defendants.

O R D E R

Upon consideration of the complaint, motion papers and prior proceedings in this case, the court orders that an evidentiary hearing be held on February 7, 1975 at 2:00 P.M. on the issues of 1) what plaintiff was informed the charges against him were; 2) what evidence in support of those charges, or other charges, was adduced at the hearing; and 3) the reasons for which plaintiff was transferred. The parties are directed to notify and produce all appropriate witnesses whose testimony will aid the court in resolving the conflicting factual allegations with respect to the issues noted above.

Dated: New York, New York
January 21, 1975

SO ORDERED

Constance Baker Motley
CONSTANCE BAKER MOTLEY

U.S.
MICROFILM
JAN 22 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER Plaintiff, vs. PETER PREISER, et al Defendant.	Before: HON. CONSTANCE BAKER MOTLEY, District Judge. 74 Civ. 5597

New York, May 15,16,19, 1975

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

CHARLES SNYDER, :

Plaintiff, :

vs. : 74 Civ. 5597

PETER PREISER, et al. :

Defendant. :

----------x

Before:

HON. CONSTANCE BAKER MOTLEY,

District Judge.

New York, May 15, 1975,
5:00 p.m.

APPEARANCES:

JANE BLOOM, ESQ.,
Attorney for Plaintiff

LOUIS LEFKOWITZ, ESQ.,
Attorney General of the State of New York
For the defendants
By: David Birch, Esq.,
Assistant Attorney General

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FOLEY SQUARE, NEW YORK, N.Y. 10007-4580

THE COURT: Let the plaintiff take the stand so we can get started. We are going to 5:30. We will continue tomorrow morning at 11.

MR. BIRCH: Your Honor, my three witnesses are here from Fishkill. They are in Beacon. This is the second day that they have not been at their post. This was originally scheduled for yesterday. I was just informed by the head of the program they would have great difficult being away a third day.

THE COURT: I'm very sorry. We have been here since 9:30 this morning, and we are trying to accommodate you. They will come back tomorrow. There's nothing I can do about it. This is a very busy court.

Proceed.

MS. BLOOM: I would first request that the defendants' witnesses be excluded.

THE COURT: Wait in the witness room, gentlemen.

They might as well leave. They won't get to them this afternoon anyway.

Come back tomorrow at 11 o'clock.

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CHARLES DYSON SNYDER, the plaintiff herein, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BLOOM:

Q Mr. Snyder, what is your age?

A Could you stand closer, please?

THE COURT: Are you hard of hearing?

THE WITNESS: I'm deaf, ma'am.

THE COURT: All right. Proceed.

Q Mr. Snyder, what is your age?

A Fifty.

Q Where are you currently incarcerated?

A Fish -- I'm sorry -- Greenhaven Prison.

Q In 1968 were you convicted of the crime of manslaughter?

A Yes, I was.

Q Where were you originally incarcerated, in the New York --

A Sing Sing.

Q In February of 1969 were you transferred from Sing Sing to Greenhaven?

A That's correct.

Q Did you apply to participate in the work-

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release program at Fishkill Correctional Facility?

A Yes, ma'am.

THE COURT: What was your original sentence? What was your original sentence?

THE WITNESS: My original sentence?

THE COURT: Yes.

THE WITNESS: Zip-15.

THE COURT: Pardon me?

THE WITNESS: A maximum of 15 years.

Q When did you apply to participate in the work-release program at Fishkill?

A When? May of 1973.

Q Was this a desirable program for you to participate in?

A Yes, it was a desirable program.

Q Why was that?

A First of all, I could maintain my vocational goals with the educational -- from that particular program; also, too, I was able to ascertain an education whereby I was not allowed to have that education when I was younger because of my hearing.

Q Did there come a time when you were transferred from Greenhaven to Fishkill?

A Yes.

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Q Would you describe your program at Fishkill?

A My program? My schedule for the day?

Q Correct.

A We would get up approximately about 4:30 in the morning and make ready for transportation to Poughkeepsie, whereat we would have our breakfast. I'm talking about the student. And upon having breakfast we would be delivered upon campus around 11 o'clock.

Q What school did you attend?

A Dutchess Community College in Poughkeepsie. And at approximately 8 o'clock most of our lectures and labs would begin at that hour and we would continue on during the day. And approximately around 7:30, which was our returning time, where we would be returned to the facilities.

Sometimes we would be on our way back to the facility; sometimes we were able to shop during the day during our free time, and also we were allowed to eat at restaurants off the campus.

Q What was your educational program while you were attending Dutchess Community College?

A My educational program was to obtain my liberal arts -- associate in liberal arts and then to transfer

to a nursing curriculum right after I finished in January.

Q What were your activities at Fishkill on the weekends?

A My activities on weekends were very -- by this I mean maybe once a month for two days we were allowed furlough. Or we were allowed to go to the campus, either the library, research or a field trip or part of the practicum I was involved in, and most of the time when I didn't have these particular programs I would stay at the facility, either studying or being able to move about the facility.

Q What other activities were you permitted to engage in besides attending school?

A Original activities I was allowed to take field trips, pertaining to my nursing, where I would go to different facilities, other activities were to --

Q What do you mean by facilities?

A Either to nursing homes, hospitals, certain organizations like the American Cancer or Heart Society or Mental Illness institutions, wherever it was necessary for us to take our practicum.

Also, I was allowed to take field trips upon a special project in which I had a school which per-

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tained to photography, which was around the immediate vicinity of Poughkeepsie.

Q Were you allowed to eat meals in the town of Poughkeepsie?

A Yes, we were allowed to eat meals in the town of Poughkeepsie, and also on any other -- in Beacon or in the routes to and from Poughkeepsie.

Q What kind of instructions were you given regarding your conduct as a participant in the study-release program?

A On the onset?

Q Correct.

A On the onset I was given special instructions after signing two pieces of paper which were exactly the same thing, in which it was told to me that I wasn't allowed to eat wherever they served liquor, I wasn't allowed to go into gin mills, I wasn't allowed to have mail off campus or off the facilities; it has to go to and from the facility.

Also, to -- I was allowed to make telephone calls off the facility, and also to that all my expenses had to be taken out of the $15 a week which I received, three meals a day and all my personal expenses, such as haircuts and some personal items for

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school supplies, and we have referred to my hearing equipment which I was told to take out of the $15 a week the cost of my batteries or whatever is necessary to have the upkeep of the instrument.

Whereupon after a brief discussion one of the parole officers conceded to maintain the same box as before, whereby the institution would procure the supplies for the instrument.

Q How much did the batteries cost?

A At that time I was using one battery per instrument, which lasts maybe about 1-1/2 to 2 days. So separate batteries, which would be a matter -- a set of four, like this particular box here, would be about $3 a week, perhaps more.

Q During what period of time did you participate in the work-release program? You began the program in --

A I beg your pardon? Would you begin that again?

Q During what period of time did you participate in the work-release program? You began the program in --

A I applied in May and I began in June of 1973. And I was expelled from the program in March -- actually

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from April 3rd of 1974.

Q On March 26, 1974, which was a Tuesday, did you participate in your normal activities in the work release or study program?

A We did. I use the word "we" because there were three -- two other students and myself.

Q There were a total of three individuals involved in the study-release program?

A A total of three in the Dutchess Community College.

Q Will you describe what happened to you and the other two individuals the evening of March 26, 1974?

A Upon arriving to the facility we went upstairs to our usual quarters on the second floor, and the other lad and myself went into our room where we reviewed the day and the assignment for the day and whatever was necessary to prepare for the assignment for the following day, and exchangec communications pertaining to these assignments, and all three of us were told -- let's see: I think it was in the morning -- no, all three of us were told that evening that we were on hold status.

Q What did it mean that you were on a hold status?

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FOLEY SQUARE NEW YORK, N.Y. CO 7-4580

A It meant that we would have to be forced to remain in the facility or at the facility -- there was some sort of indication it meant that we had to stay at the facility until we were allowed to participate in whatever work-release or study.

Q Did any correction officer speak with you on March 26th regarding the effect that you had engaged in any type of misconduct?

A No.

Q Did any correction officer speak with you that day or evening regarding the reasons for the hold status?

A The reason? No, ma'am.

Q Did you know in any other way why you had been placed in the hold status?

A No, I did not.

Q Were you sent any written notice on March 26th regarding the fact that you had been put in the hold status?

A Written notice? No, I was not.

Q Were you sent any written notice regarding the reasons for being placed on the hold status?

A No, I was not.

Q On March 27th were you kept in a hold status?

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A Yes, we were, and I was.

Q All three individuals were?

A Yes.

Q Did any correction officers come to you to speak with you about the reasons for the continuation of the hold status?

A No.

Q Did any officer come to speak with you regarding any charges that had been placed against you?

A No.

Q Did anyone else speak with you individually regarding the reasons for the hold status?

A No one spoke to me from the institution at all.

Q Did anyone tell you that you would be seen by a temporary release committee?

A Nobody even mentioned that either.

Q On March 27, 1974, were you brought before a group of parole officers at Fishkill?

A I wasn't brought before, I was told to go downstairs to see them.

Q How were you informed that you were to see them? What happened?

A "Go downstairs and see them. They want

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to see you.

Q Who told you this?

A Correction officer that was on the floor.

Q Prior to being brought before these officers were you told either orally or in writing the reasons why you were being brought before --

A No, I was not.

Q -- these men?

Did you know who the officers were?

A When I saw them?

Q Right.

A I knew them by name; most of them.

Q Did youknow what the powers of the group were that you were meeting?

A I could only assume, so by assuming it won't be a true answer.

MR. BIRCH: I'm sorry?

Q What would you assume?

A I assumed that they were disciplinary people, adjustment -- we usually callthem an adjustment committee.

Q Were you told anything when you were being brought down before the officers?

A Before I was --

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Q While you were being brought down.

A No, I was not. I wasn't brought down. I was sent down. I had to go down by myself.

Q When you first walked into this meeting room did anyone inform you of the purpose of the meeting?

A No.

Q Did anyone at that time inform you of the charges placed against you?

A Nobody said anything about any charges.

Q Before anyone asked you any questions did they advise you that your statements couldn't be used against you in any other proceedings?

A Could I have that one again?

Q Before anyone asked you any questions did anyone inform you that the statements that you would make couldn't be used against you in another proceeding?

A Nobody said anything like that.

Q Did anyone advise you that if you chose to remain silent no inferences could be drawn from that silence?

A No.

Q Did anyone advise you that that group had the power to remove you from the study-release program?

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A No.

Q Do you remember what the first questions directed to you related to?

A Related to? I remember what the first question was. One of the members asked me who was Mary or Marge Covell? I never knew her last name. I told them I didn't know anybody by that particular name, and they had to go through a series of signs in order to make me understand whom the individual was, and I only knew the individual by the name of Margery.

Since she used to come to our group or around our group, which you know a great many people of the student body we used to congregate with, having coffee in the cafeteria, and that's the only way I could remember who the person was, because I never had any association with the person at all.

Q What were the next type of questions that they asked?

A They asked me did I ever -- they asked me did I ever take anything or give any message or give anything between this person and another inmate in the institution, and I told them I had not because that was against the rules and also the fact that the individual or the inmate in whom they were referring to,

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one of the correction officers had told me when he came onto the program he's bad news. So I kept a hands-off policy of even knowing who the individual was or even associating with him.

Q What was the next subject of questioning?

A Right after that one of the members asked me, "What happened to you on March 22nd, Friday, March 22nd?"

And I told him I had received a speeding ticket.

Then the nexe series of questions was, "Did you have a license?" and I said yes, I was licensed by the facilities when I first came there.

Other questions were -- these are not in chronological order, but other questions were: "What car were you driving?" and I told them I was driving a private person's car.

Then they asked me why I was driving it. I told them the circumstances whereby when I went to school that particular day there was a woman there who was in our regular nursing group who felt faint and was -- had a lapse of consciousness and also she was disoriented and feeling rather sickly, so she asked me if I would take her home, or something like that, and

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FOLEY [illegible] NEW YORK N.Y. [illegible]

I said yes, I would take her home. And I took her to her car, put her in the car and I took her all the way home.

Upon arriving home I made sure she was all right and she told me that the children hadn't gone to school yet, would I mind taking the children to school. So I waited a fewm inutes more and then she seemed to feel much better and she got in the car with me and I took the children -- we both took the children to school. But before we got to the children's school I was ticketed for a violation.

After I received my summons I took the children to school and then proceeded on to stool myself.

Q Were you questioned regarding any other matters at this hearing?

A The only other question was with regard to my license. I couldn't quite assimilate exactly what the type of questions were because the lighting facility was kind of bad, like on you right now, the darkness on your face, I can't read your lips too well. And the questions came from all different sources or from each individual and I couldn't assimilate what they were saying, but I assumed that some of the questions involved were how did I get my license, and another

particualr question was, "Were you asked to turn in your license two weeks ago?" To that I answered yes, I was, but I didn't have my license available because I had left it down in my daughter's place here in New York City on a furlough, and some other personal items, which I left accidentally when I was here.

And then they proceeded -- well, "Didn't you have a license?"

I said, "Yes, I had the renewal stub." The renewal stub is the one which has the -- you turn it in for a new license at the expiration, and also on the back indicates the -- any violations that you have. And it was still good to the officer who took the license and took the name and made out the summons.

Q Did you have difficulty hearing at the meeting on March 27, 19 --

A Yes, I had quite a bit of difficulty at that time because the lighting was bad, the reverberations of the room was extremely -- where I could not distinguish between sound at all.

Also, too, I had a defective hearing aid in which I had tried to get replaced three months prior in December on the request of the doctor at the facility.

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Q Would you describe very briefly your hearing problem?

A Briefly, if I can, I'm a congenitally deaf person, preliterate deafness. I have gone to school for a good number of years in training to use signs and also to be able to speak, and to be able to ascerrtain conversations and to assimilate any information, things which I see so I can maintain a conversation. My deafness is a nerve deafness whereby there is no sound -- there is no sound to be used as far as hearing is concerned. It is a stiuation where I'm not stone deaf, there is no person who is ever stone deaf, and I just can't hear sounds at all or distinhuish what the sound is.

THE COURT: Excuse me, Miss Bloom, it is 5:30. We are going to recess now until 11 o'clock tomorrow morning in this particular matter.

(Adjourned to May 16, 1975, at 11:00 a.m.)

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FOLEY SQUARE NEW YORK, N.Y. 10007 7-4580

CHARLES SYNDER

v. 74 Civ. 5597

PETER PREISER, et al.

New York, May 16, 1975
11:30 a.m.

- - -

(Hearing resumed.)

- - -

C H A R L E S D Y S O N S N Y D E R, resumed.

DIRECT EXAMINATION (Continued)

BY MS. BLOOM:

Q Mr. Snyder, in the spring of 1974, did you have a properly functioning hearing aid?

A I am sorry. I didn't quite get that.

Q In the spring of 1974, did you have a properly functioning hearing aid?

A No, I didn't.

Q What hearing problems did you experience as a result of the faulty hearing aid?

A The hearing aid was defective because it was corroded and that is not functioning properly as to being able to distinguish sound. The volume was completely shot and the cord was constantly, or the receiver itself was constantly filled with material which couldn't be

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extracted.

THE COURT: I can't hear what he is saying. He will have to speak up.

Q You are going to have to speak up.

A Please explain to the Judge that I have an impediment in voice control.

Q Let me go over that. What hearing problems did you experience as a result of the faulty hearing aid?

A The hearing aid itself was defective to the point of receiving any sound, it was corroded, the receiver was constantly going on and off because it was filled with material which could not be extracted, it could not reach the volume not only that I am used to but need to have, which is a very high compression, a high condensed sound which I need.

Q Does the hearing aid permit you to hear individuals speak?

A No, it does not.

Q What does it permit you to do?

A It permits me to know that there is a sound or a noise present and that I can try to associate the lip reading with the sound which I am getting. There is no distinguishing of sound as the natural ear could usually do.

Q On March 27, 1974, did you have difficulty in hear-

ing at the meeting?

A I had a difficult time in finding -- not finding out but seeing what was being said and to understand what was being said because of the lighting facility, it was night time, the reverberation of the room itself was unsuited for hearing of that kind, and there was no degree of time elapsed between a person's asking me questions or no courtesy given to me so I could understand what was going on.

Q Did you have anyone assist you at the hearing?

A No, I didn't.

Q Can you just explain how you have the ability to drive with this hearing problem?

A Yes. I am a very good driver. I have been driving since I was thirteen years of age. I used to drive on a farm. In those days we were allowed to drive when we were fourteen years of age, when we were on farms.

Q Does your hearing problem make it difficult for you to drive?

A The hearing problem does not make any difficulty in driving. In fact, many deaf people do drive cars and have licenses throughout the country.

Q Getting back to the meeting of March 27th, what happened immediately after you finished your discussionwith officers?

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A With the officers? I went upstairs, as instructed, and went back to my room and waited to find out what was going on, and also to finish up the assignment for the next day for school, hoping that I would be taken off the hold status.

Q Were you kept on the hold status while two other students were allowed to go.

Q Were you told why you were kept on the hold status?

A No, I was not.

Q When were you told what the results of the meeting was?

A April 3, 1974.

THE COURT: When was the hearing?

MR. BLOOMINGDALE: March 27th.

Q What were you notified of at that time?

A I was given a letter which specifically said something -- said in essence "You are expelled from the program for breach of an agreement." Those particular words seemed to have been in that particular letter, or notification or memorandum.

Q Were you notified what would happen to you as a result of being expelled from the program?

A No.

Q Did your hold status continue?

A My hold status continued.

Q How long did it continue?

A It continued until April 15th, when an officer came to my room and told me to pack up, I was leaving. And I asked him where, and he said "Back to Greenhaven."

Q Is Greenhaven a maximum security institution?

A It sure is.

Q What educational losses did you experience as a result of being removed from the study release program and sent back to Greenhaven?

A Several. First of all, I lost my nursing curriculum to be -- to complete that study; I lost the rest of my majors in which I could be able to continue to study for my psychology bacchalaureate. I also suffered a loss of 20 credits that I was taking that particular term, which could have been withdrawn from the school, or the Director of Admissions in time, so that I would not have to experience a failure in all 20 credits. Also I --

Q Did Fishkill correctional officers notify the school that you had been removed from the study release program?

A No.

Q When you got back to Greenhaven in April, as a result of a telephone call to the Director of Education in

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Greenhaven, where I began working with him, he told me that the Dean of Students said he didn't know what happened to me because I was on campus -- I was off campus and nobody else knew what happened either up to about a week prior to that telephone call, and that was somewhere's around April 20th, when we were speaking to Dean Hart.

Q At that time was it too late for you to withdraw?

A Yes, it was too late.

Q Did you experience any harm regarding visits that you were permitted as a result of the transfer?

A In the way of harm? The visits were curtailed to the limitations of the Greenhaven Prison as to the number. It was limited to the number of people who used to come to visit me; also, too, I was allowed certain privileges at the Fishkill where I would have some sort of privacy with my visits because of my hearing difficulty in enclosures which they have at Greenhaven and at Fishkill.

Q Were you able to continue the work that you were involved in with the Office of Vocational Rehabilitation when youwere transferred to Greenhaven?

A No, I was not because of the fact --

Q Will you describe the work that you had been doing with that office at Fishkill?

A At the Office of Vocational Rehabilitation they

were taking on the job of counselling me and teaching me and also allowing me to gain back my acuteness, or my ability to lip read and also to associate sounds, in other words to hear properly.

Q Were you getting speech therapy with them?

A I was getting speech therapy too, which I have not gotten somewhere in about eight years, and it has been discontinued again and I am still having trouble with speech.

Q Were you permitted to participate in furloughs once you were returned to Greenhaven?

A Once I was sent back to maximum -- Greenhaven, no more furloughs were allowed me even though I fit the criteria to have furloughs.

Q Is this notice an example of one statement that was sent to you denying you a furlough at Greenhaven (handing)?

A Yes, it is. This is probably the second or third one which I had applied for.

Q Will you read the reason for the denial of furlough?

A "Failed to adjust in educational release program. Poor risk."

MS. BLOOM: I would like to mark this as Plaintiff's Exhibit 1.

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MR. BIRCH: No objection.

I don't understand the date. There are two dates on this. It makes no sense. The application is dated the 6th of November, 1974. The denial is dated 1-13-74, which was when Mr. Snyder was still at Fishkill.

THE COURT: I can't hear you. Please speak up.

MR. BIRCH: Sorry, your Honor.

The application for the furlough is dated November 6, 1974 and the denial is dated January 13, '74 when Mr. Snyder was still at Fishkill.

THE COURT: This is an application for a furlough to do what, Miss Bloom?

MS. BLOOM: This was an application for a furlough. I think perhaps the denial was dated 1-13-74. It might have been a slip when someone marked '74 instead of '75.

MR. BIRCH: I don't think so. I think this name is a name I have --

THE COURT: Just let me understand what this is all about. What is this about his furlough. I don't understand.

MS. BLOOM: This is a statement which indicated that he was denied a furlough because of the fact that he was expelled from the work release program.

THE COURT: A furlough to go home?

MS. BLOOM: To go home, to visit relatives.

THE COURT: How long would that have been for?

MS. BLOOM: It would have been for a period of two or three days.

THE COURT: All right. Let's admit it and worry about the date later. Maybe there is some explanation. You can call whoever made the document up and explain the date.

MR. BIRCH: But the name,I think, is from an employee at Fishkill, not at Greenhaven.

THE WITNESS: May I see that, please?

MR.BIRCH: So I object to the introduction of that document.

Q The top of this document is entitled "Greenhaven Correctional Facility."

MR. BIRCH: Yes. But it is a Xerox of two documents, obviously.

A I wasn't in Fishkill in November of '74.

MS. BLOOM: I can submit the original. Why don't I do that? That was what he was given.

MR. BIRCH: I don't think it is clear that this was only one document. It was clearly two.

Q Were you permitted to participate in furloughs

at Fishkill?

A Yes, I was.

Q What was a furlough? What is a furlough?

A What is a furlough? Normally a furlough is a 7-day leave. But at Fishkill they only gave us two days a month. And it was held that if we had any misconduct our furloughs would be taken away for that particular month.

Q Where would you go during your furlough?

A I went one of two places: Either at Reverend Impelliteri's home, so that I would have a base to go visit my mother over in Suffolk County Nursing Home.

Q Are you currently permitted to apply to again participate in a study release program?

A Permitted or allowed?

Q Allowed.

A No, I am not allowed to make an application for furlough or work release, study release, as per a subordinate member of the temporary release committee, who refuses to give me an application, saying that my files say do not apply for either.

Q Are you interested in again participating in a study release program?

A Yes, I am.

Q Why are you interested in participating in this type

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of program?

A To complete my majors which I surely need for the baccalaureate, also to rejoin the UYA, in which I was accepted. If I may explain, in the UYA, it is a suborindate to the Peace Corps and Vista Corps of the government, and it is known as the University Year of Action, which I was one -- out of 30 people who were selected as candidates for this I was selected late, when any name was submitted late, out of hundreds, and I was the only convict who was ever admitted to that particular program.

Upon entering the program, at the approval of the college and of the ministers of the program, other agencies, such as BOCES and a legal office immediately, knowing my background, asked for me to serve in this capacity, especially in special education and legal.

Q Is this University Program conducted by Marist College?

A It is conducted through Marist College, yes.

Q So you would be attending school as well as working in the community.

A Yes, I would be attending school, getting my special education majors, that is, teaching to the handicapped, and also working in that particular area.

Q Are you permitted to participate in this program

while incarcertated at Greenhaven?

A No, I am not.

Q Is there a possibility that you would be permitted to participate in this program if you return to Fishkill?

A According to one of the supervisors, yes.

Q When does this program begin?

A June first of this year.

Q Were you considered for parole by the Parole Board on April 4, 1974?

A Yes, I was.

Q And what was the disposition?

A The disposition was I was denied parole.

Q Were you considered by the Parole Board in April of 1975?

A Yes, I was.

Q And what was their decision?

A I was denied parole.

Q Were you given any reason for denial of parole?

A I wasn't given any reason for denial of parole, no.

MS. BLOOM: Those are the only questions I have now. I would like to be permitted to recall him for rebuttal purposes, if necessary.

THE COURT: Well, I believe Mr. Birch would have an

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opportunity to cross examine him and then you can have redirect.

We will proceed in a few moments.

CROSS EXAMINATION

BY MR. BIRCH:

Q Will you look at this document, Mr. Snyder? Is that your signature on the bottom?

A Yes,that is my signature, right here (indicating).

Q Will you read the last paragraph?

A "I agree to comply with the terms of my work release program and I will carry out the instructions of my parole officer or other employees of that department. I will conduct myself in a law-abiding manner and will now allow my behavior to become a menace to the safety of any individual or group of individuals."

MR. BIRCH: I would like to introduce that as Defendants' Exhibit A.

MS. BLOOM: I have no objection.

xx (Defendants' Exhibit A was received in evidence.)

Q Is this your signature (indicating)?

A Yes, that is my signature.

Q And would you read for the court this paragraph (indicating)?

A Which paragraph? This one (indicating)?

Q This paragraph (indicating).

A "His route to travel between Fishkill Correctional Facility and his place of employment shall be the most direct route, using primary state roads wherever possible."

We have to carry this to identify ourselves in case of any difficulty.

MR. BIRCH: I move to introduce this Defendants' Exhibit B.

MS. BLOOM: I have no objection.

THE COURT: Received.

xx (Defendants' Exhibit B was received in evidence.)

Q On March 22, 1974, when you received that ticket, where were you in relationship to the route between Fishkill and Dutchess Community College?

A I was on a state highway in Pleasant Valley.

Q And how does that highway and Pleasant Valley relate -- compare to the direct route between Fishkill and Dutchess Community?

A There are many direct routes between Fishill and Dutchess which we took.

Q Was that one of the most direct routes that you took?

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A No, not at that time.

Q Where were you going at that time?

A At the time I received the ticket?

Q Right.

A I was going to a primary school.

Q Why were you going to this school?

A I was taking two children to that school.

Q Was there no one else to take those children to the school?

A Evidently not.

Q You testified on direct that you met a friend while youwere at Dutchess Community College and she asked you to take her home?

A Yes, I did.

Q There was no one else then, no one who was not an inmate of a correctional institution who could do that for her?

A I beg your pardon? You have so many questions here.

Q There was no one else that could take that friend home? You had to do it?

A I suppose I did not have to do it. But I felt, because of my training with nursing, that I should.

THE COURT: He felt what?

MR. BIRCH: That it was his duty becaose of his training in nursing, that he should.

Q Were there no other people there at that time who had training in nursing who could do that?

A Yes, but --

MS. BLOOM: I object at this point. It appears to me that the question before the Court today is what evidence was adduced regarding this matter at the hearing on March 27th. It is not the function of this proceeding to serve as a replacement for that hearing.

MR. BIRCH: I think the nature of the infraction is very important and goes to --

THE COURT: Yes. And it was brought out on direct. He has a right to cross examine this witness as to any statement he made in his direct examination as to what he was doing and why he was doing it.

MS. BLOOM: The questions on direct related to what was he asked and what did he reply at the hearing on March 27th.

THE COURT: Overruled.

Q I don't remember if you answered if there was anyone else that could take this friend home.

A No, I didn't answer.

Q Would you answer for the Court?

THE WITNESS: Was her objection overruled?

THE COURT: Overruled.

A If there was anyone else? There were two other parties, but they didn't have cars or didn't have driver's license to do this. And also, too, the party, if I may say, felt more assured of my susceptibility to help her than the other two.

Q She didn't know that you were not permitted to do that?

A No, I don't think she did know.

Q But you knew that you were not supposed to do that.

A I wasn't supposed to do what?

Q Drive her home.

A I don't think the question is relevant to the situation at hand.

THE COURT: You are instructed to answer the question.

A I would have to say yes and no.

Q Would you explain, please?

A Yes, I knew I wasn't supposed to take her home under certain conditions which the parole officer seemed to indicate. Under this particular situation, no, because of the fact that the person was ill and I had to use whatever facility I had available to assist.

Q How ill was this friend?

A She had lost some consciousness. She was just disoriented. What the physiological thing is, I don't know.

Q Where did this occur? In what room did she ask you? Where were you when she asked you to take her home?

A The cafeteria in Dutchess Community College.

Q And how many people does this friend know at Dutchess Community College?

A I don't know. I never took a census.

Q She had no other friends who could have taken her home?

A I don't know.

Q Is there a nurse at Dutchess Community College or a doctor to take care of sick students?

A Yes. Miss Helen Butler, a personal friend of mine, who didn't appear upon campus until after 9 o'clock.

Q And what hour was this?

A Just before 8.

Q 8 a.m.?

A That is correct.

Q When you were taking this friend home and you were stopped by a State Trooper -- is that correct?

A No, that is not correct.

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Q Who did stop you? Oh, it was after you were returning from her home to the college or to a public school.

A To the public school with the children, yes, I was stopped.

Q Did she feel better at that time?

A More or less, yes.

Q And why were you driving the car then?

A She felt safer with me driving the car and also to allow her to relax.

Q Yet she had driven to school herself that morning?

A Yes, she did.

Q A Trooper stopped you on the way to this public school?

A Yes.

Q You were able to communicate with him?

A Yes. I am communicating with you.

Q Well, you claim -- and when you are in class, could you communicate? Could you answer questions? Were you --

A What has this got to do with the problem?

Q It has to do with your hearing problem.

A In class I have a fairly good communication, if I have the proper instruments and the proper seating arrangements.

Q And with your friends and your family you are able to communicate and with your attorney?

A Yes, as I am communicating with you, yes.

Q And yet, when you saw the temporary release committee on the 27th of March, suddently your communication became more difficult.

A It was a very stressful area.

Q Was it a stressful area when the Trooper stopped you for speeding?

A Yes, I was under stress.

Q And yet you understood him.

A Well, I know what the mode is to ask for a ticket and I knew what he said. He said, "May I see your driver's license?" He was only standing from where you are to me.

Q And the distance between you and the members of the committee on the 27th of March?

A Were from me to where my attorney is.

Q On direct you said you didn't mention anything about a hearing problem until it came to when your attorney asked you --

A I beg your pardon?

THE COURT: Withdrawn?

MR. BIRCH: Withdrawn.

Q Did you tell anyone at Fishkill Correctional Facility that you had received a speeding ticket?

A Yes, I did.

Q Who did you tell?

A Whoever asked me the question at the table at this hearing.

Q On the 27th of March.

A That is right.

Q Did you tell anyone before that?

A No, I didn't.

Q Why did you not?

A Because it was a simple matter of which I could take care of myself.

Q Yet here you are an inmate of a correctional facility, admittedly away from the area you were supposed to be, receiving a traffic ticket, and you didn't think that that was major enough to tell anybody?

A Could you rephrase that, please? I didn't quite get that.

Q Yes. I said as an inmate of a correctional facility, who was given a speeding ticket for a traffic violation in a place where you were not supposed to be, and you did not think that serious enough to tell anyone at the facility, your correctional counsellor or your parole

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officer?

A No, because it was a normal -- I was at liberty at that time.

Q You were supposed to be at school at that time, correct?

A At school? My class didn't begin until maybe shortly after I got to school.

Q Which was when?

A 9 o'clock.

Q So from 8 to 9 you felt at liberty to go wherever you wanted?

A I didn't feel at liberty, sir. Don't put words in my mouth.

Q You just said you were at liberty.

A In other words, were at liberty liberty.

Q Were your extended bounds of confinement agreement ever discussed with you when you first entered the program at Fishkill or at Greenhaven?

A No.

Q No one ever told you?

A No.

Q But yet you signed this sheet that told you you were supposed to take a direct route from Fishkill to Dutchess Community College?

A Yes.

Q And you signed it without knowing what it meant?

A I knewwhat it meant. They explained that I would have to go between here and there. I wasn't a driver at that time.

Q But it was explained to you that you were supposed to go from Fishkill to Dutchess.

A It was explained to me, if I may be so bold, in their words, "Follow George. He knows what to do."

Q That's all that was ever told you?

A Yes.

Q What did George usually do?

A George is another inmate. I didn't follow his every example.

Q Did George wander from the direct route between Fishkill and Dutchess Community College?

A We are not discussing George.

Q You said you didn't always do what George always did. You said you followed George.

A I had to. He was the driver.

Q Did George, when you were -- you were told to follow George?

A In other words, follow his example, follow whatever hints he can give me, whatever clues he can give me. It is

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another piece jargon, as you well understand, since you have gone to school and what have you, that the administrator would say to you "Your fellow peers can help you out in this."

THE COURT: Excuse me, Mr. Birch. We will have to recess in this case for a few moments.

(Recess.)

THE COURT: You may proceed.

Try to keep your voice up so I can hear you.

Q We were talking about George at the time, your friend George?

THE COURT: Who is George, again?

MR. BIRCH: The plaintiff answered that he was told to follow George, another inmate, as far as what to do in terms of not leaving his bounds of confinement. I am trying to find out if George every left his bounds of confinement agreement.

THE COURT: Let's find out for the record who George is, so the record is clear.

Q Who is George?

A Another inmate in the study release program. We were both in the nursing program at that time.

Q And you said earlier that you were told by the official authorities at Fishkill to follow his in-

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structions?

A His specific words were "George has been in the program for about a year. So therefore he can help you with the instructions. So follow what he has to say."

Q Did George tell you about following a direct route from Fishkill to Dutchess Community College?

A He said --

THE COURT: Have him turn around. I can't hear what he is saying, the reporter can't hear. We can't have any hearing like this.

(Question read.)

A George had mentioned it when we were at Greenhaven Barracks, because he was the driver at that particular time. And then when I became a driver at Fishkill we had something like three or four different routes to take, because I had to go over to Newburgh, I had to go to Milltown, I had to go to other areas and also Hopewell Junction in order to drop off other men in their particular assignments too, as well as to take them to and from dinners and breakfasts and then go on to college from any of those particular points.

Q But on March 22nd at 8 a.m., when you went to your friend's house, that was not one of those routes, correct?

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A No, it was not.

Q You said in an affidavit submitted to this court sworn to January 14, 1975, in Paragraph 9: "I request that I be returned to Fishkill Correctional Facility so that I might resume my nursing studies at Dutchess Community College in January 1975."

A Yes.

Q Is that correct?

A Yes, sir.

Q Have you received a degree from Dutchess Community College last August, an associate arts degree?

A Last August? No. From January '74 I completed my liberal arts and an associate degree.

Q When did you complete this degree?

A January 1974.

Q January '74?

A That is right.

Q And when did you receive that degree?

A I received that degree June 17th in Greenhaven.

Q And after that you were continuing your nursing program then?

A No. I had transferred to the nursing program in January '74 at Dutchess, when I was on the work release program.

Q And you received no degree then from Dutchess in August '74?

A In August '74.

Q Correct?

A No, not in August. I had completed it in January. I was informed that I had completed it by the administrators of the college and that I would be receiving it in June.

Q And you did receive it in June?

A Yes, when I went back to maximum security in Greenhaven on June 17th. We had a special ceremony in the Greenhaven mess hall.

Q When you were put in the hold status in March of 74, did you have any idea that the reason for this status was your speeding ticket?

A No, I didn't.

Q You thought it was such a minor thing that it would be forgotten?

A Because there were three other boys in the same class as I was, the same status. There were three of us who were put in hold.

Q And you had no reason to believe why they should be put in hold?

A No. All three of us were assuming various things, trying to think of what it could be.

Q and --

A We were only thinking in terms of losing our furlough again.

Q And the ticket did not cross your mind at all?

A No, it did not.

Q Did you meet the temporary release committee in January of 1974?

A Did I meet?

Q With them.

A I met with a group of men, an adjustment committee I guess we call it in prison.

Q And what was the problem that was discussed there?

MS. BLOOM: I object. I question the relevancy of what this has to the hearing of March 27th.

MR. BIRCH: It goes to the record as a prisoner, and accumulated infractions that led to his transfer from Fishkill.

THE COURT: All right. Overruled.

A In January -- this was relative tobeing late, not myself being late but why we were all late almost every night, and because of the fact that I had to go from various -- put it this way -- various houses and various gin mills and other places of ill repute picking up the rest of the work release crew, not the student release, work release crew,

and literally dragging them out of these places and trying to get them back to the facility because I was always told by the correctional officers there "Just don't leave anybody behind, get them all back."

Q Were you given any warnings at this meeting about your future behavior?

A I was not given any warning. In fact, all of us were called back in at this particular meeting and we were told that we were not allowed to be late any more or we would lose some more time or something of that nature and that they would issue new driving, or new drivers to the cars. And we did get another inmate driver and we went through the same thing all over again.

Q Did you meet the temporary release committee in February 1974?

A I met another adjustment committee in 1974, yes.

Q And do you remember this affidavit that you signed on January 14th?

A I beg your pardon?

Q Do you remember the affidavit that you signed in January of this year?

A Yes.

Q And you said--

A I would like to review it.

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Q Would you read Paragraph 6 (handing)?

A Paragraph 6.

Q Would you read it to the Court?

A Yes. "I was never seen by the temporary release committee in February '74." Which is a true statement as to my perception to that, because we assumed not that it was a temporary release committee but an adjustment committee like we have in prison.

Q What do you see as the difference between the twp?

A Adjustment committee is one that you go before with an infraction and they observe some kind of privilege which is taken away from you such as furlough or some other little trivial thing. I would not know if that was a temporary release committee.

Q Will you look at this, please (handing).

(Pause.)

A I have seen a copy of this before. I was asked if I had ever received it. No, I never did receive that.

Q You never received it.

Will you look at this (handing)?

(Pause.)

A It seemed to be the time which was sent to me, but it has two or three words which seem to be missing, to my recollection, the word "expelled" and the words

"bound of confinement" was not included in that letter. In other words, it seemed to be that there is either an inclusion of words or an exclusion of words. And that is dated March 29. I received that on April 3rd, the one that I spoke of.

Q You said on direct, or previously on cross, that the reason you took your friend to her home in Pleasant Valley was because she wasn't feeling well?

A Yes. A little more than just not feeling well.

Q Are you familiar with the complaint drawn up in this action by your attorney?

A Yes, I am familiar with it.

Q Did you review it before she submitted it to the Court?

A Yes, I did.

Q Are you aware that in Paragraph 14 of the complaint it stated that you left Dutchess Community College because you were requested by a friend to drive her two children to school, because they had missed their school bus?

A May I see that?

Q Yes (handing).

A Yes, I made the notation to my attorney about that because it wasn't precise that I was requested by a friend to drive the two children to school -- in other

words, what I am saying is this: I was requested by a friend to drive her two children to school because they had missed their school bus, and that was the result of the ticket. It had nothing to do with leaving Dutchess Community College.

Q Did a Parole Officer Guempel visit you on the 26th of March, 1974?

A Visit me?

Q Yes, while youwere in hold status?

A No, he did not.

Q When was the first time that you protested your transfer from Fishkill to Greenhaven?

A Directly after I was transferred.

Q And to whom did you make that protest?

A To some of my friends who were trying to solicit an attorney for me to do this.

Q Am I correct, then, that you havenot taken any courses since you have been transferred back to Greenhaven?

A What do you mean by not taking any courses?

Q Have you enrolled at any school?

A I have enrolled in the Marist College program, which is at Greenhaven.

Q And you are taking courses there?

A I have taken courses there and I have a 3.0 cumula-

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tive average and most of -- all of these courses have nothing to do except lesser allied courses to those majors in which I will be eventually taking.

Q What do you mean by "lesser allied"?

A In other words, I have an associate degree in the undergraduate studies, of under courses. They are not the upper-level courses which I need for the junior and senior year, which I am taking.

Q Can you take these upper-level courses at Dutchess Community College?

A I can take them either at Dutchess Community, Marist or Mount, where my scholarships were made known to me while I was at Greenhaven.

Q Even though you have an associate degree already, you can enroll once more at Dutchess Community College?

A I am still enrolled in Dutchess Community College under the nursing curriculum.

Q And what degree do they give for that?

A A.A.S., Associate Art of Sciences.

Q When you met the temporary release committee in March of '74, at what point did you inform, or did you inform the people there that you had trouble hearing them?

A The first part I am only going to assume what you say. Did I ever admit to anybody that I had trouble hearing

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them? Yes. They knew I had trouble hearing.

Q How long into the meeting did you tell them that you had trouble hearing them?

A They could see I had trouble because I had to keep asking them what they had said or what they did say, ask them to repeat.

Q But you did hear what they said once they repeated it?

A No, I didn't hear what they said.

Q Yet you admitted to them that you did get the speeding ticket.

A Yes, I admitted to them, because they asked me. I told the truth.

Q When you drive, can you hear cars coming behind you?

A I see them coming behind me.

Q What if it is not visible in the rear-view mirror?

A You mean on a regular car?

Q Right.

A On my own particular car, when I have a car, or even on the state car, we have a rear-view mirror on both sides. They are called west coast mirrors. They are about 12 inches long and about four to five inches wide and also we have a very long mirror overhead, the

overhead of the windshield.

Q Did you have those mirrors on the car you were driving the day you got the ticket?

A Yes, I did.

Q You did. But it was your friend's car?

A That is correct.

Q And her car was set up with these mirrors?

A Yes, they are set up with her mirrors. Her son is very adequate in these kind of safety measures.

Q Did you have any discussions -- or how often did you have discussins with your corrections counselor -- withdrawn.

Was Albert Palumso, is it, your correccions counsellor while you were there?

A While I was at Fishkill he came on somewheres around January as a counsellor.

Q And how often did you talk with him?

A Oh, I talked to him quite often because he is a friendly person and he and I related very well.

Q Did he ever talk to you about your adjustment problems to the program?

A My what?

Q Your adjustment problems to the program.

A He had never mentioned that I had any adjustment

problems and he even admitted that there was no adjustment problem.

Q And he never warned you that you were possibly going to be removed from the program?

A No, he never did.

MR. BIRCH: No further questions of this witness.

THE COURT: All right.

Any redirect?

MS. BLOOM: Yes.

REDIRECT EXAMINATION

BY MS. BLOOM:

Q Would you describe once again the type of problems that you had when you were meeting the committee on March 27,1974? What was the physical set-up of the room, first of all? Where were people located and where were you sitting?

A The room was somewheres around, I would say, mid 20 feet long, at least 18 feet wide, maybe a little longer. That room was used for a visiting room and there were pillars in the center of it. There were long tables, maybe about 3-1/2 feet wide. The lighting was very poor. They sat directly underneath the lighting and I had to sit in front of them, away from the table, in a particular chair that was put specifically for me to sit in, and I was

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told to sit there.

Q Were the members of the committee sitting around the table?

A They were sitting (indicating) the length of the table.

Q If, let's say, you were sitting where you are sitting right now --

A One man was sitting there ,one man sitting there, and one man at that end of the table, looking up this way (indicating).

Q Did they indicate to you when each one of them was speaking so that you would know to turn to look at one as opposed to the other?

A The only way I knew somebody else was speaking is when Mr. DaSilva would turn his head and I would look in that particular direction. That is one of the signs deaf people look for to know who is speaking and --

Q Did you have difficulty hearing these individuals because of the way in which they were sitting at that table?

A I had a very difficult time to understand what they were saying, yes.

Q When you are speaking with someone such as a State Trooper or someone standing where I am standing right now,

do you have difficulty hearing me?

A I have no difficulty in understanding what you are saying, no. Maybe perhaps I might have a little bit difficulty, which is normal.

Q And why is it that you don't have difficulty understanding what I am saying?

A I can see your lips very clearly from this particular position. And you are the only concentration I have at the moment when there is a communication going on. Also, if I couldn't understand what you were saying, I would ask you.

Q Would you describe where you went on some of the field trips that you engaged in as part of the study release program?

A Which one?

Q What areas of the county, of Dutchess County, you went to? Let's say your photography course.

A Well, I had permission to go off the county. I used to travel outside of Poughkeepsie and various areas, to go directly there, say some part of Beacon, sometimes to Milltown, some part of Pleasant Valley. There is an area in back of the college which is another township, I guess Hyde Park, which I used to take photographs there.

Q Would you go to these areas by yourself?

A Yes. I was the only one taking the project.

Q And you would go to these areas and then return to the college?

A That is correct. I would do it in between classes.

Q Did you take field trips as part of your nursing courses?

A Yes, I did.

Q Where would you go?

A Nursing homes, hospitals, St. Francis Hospital, Hyde Park Nursing Home, the American Cancer Society, the American Heart Society, and their particular agencies.

Q Where are these agencies located?

A One is located directly off Market Street in Poughkeepsie on Cannon Street. St. Francis is located north of Poughkeepsie, just before the Mid Hudson Valley Institution, State Home or Hospital. I have been there too.

Vassar Hospital is located south of Poughkeepsie. It is on the entrance to South Poughkeepsie.

And they have not only the Vassar Brothers Hospitals, but they have other agencies or other facilities which are part of the hospital about Poughkeepsie.

Q You stated that you met a temporary release committee in January of 1974. What type of notice were you

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given prior to meeting this group regarding why you were going to be meeting them?

A In January?

Q In January of 1974.

A Why I was going to be released?

Q Why you were meeting this committee.

A I wasn't given any notification. I was just told to go in to see these people, these men.

Q What type of conversation occurred at that meeting?

A At that meeting in January?

Q Yes.

A The conversation was, "Chuck, you have been late almost every night this week, or every night in January for the last couple of weeks. Which wasn't entirely true because I was working by myself one week at the college in which I wasn't involved in driving the inmates from here to there, because there was a recess at that time.

But aside from that, the times in which I was driving the other inmates to and from their work, it was very difficult to pick them up at a particular location where we were agreed to meet and which was agreeable to be a pick-up point in Poughkeepsie according to the parole officer. They were never there and they had to be

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there by 7:30 so I could get them back into the facility by at least the 14-hour limit.

Q How many inmates were you responsible for picking up?

A Nine.

Q Did you discuss this matter at that meeting?

A I tried to discuss that matter, but I was a little fearful to discuss it because of the fact that I was an inmate in a facility where there were other prisoners and there is a credo in prison that if you open your mouth you get your skull cracked.

Q Were you notified --

A I told the committee that.

Q Were you notified of any decision regarding -- as a result of this meeting?

A The only decision was that when we went upstairs we were called back into the room, all the members of that particular car that we were in, that they would not tolerate any more lateness and that they would give us a new driver. And that did happen. But the same thing happened all over again, but we had additional men, we had additional study release men, and we were not involved in any of this except the work release people.

Q How long did that driver last?

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A On our particular route, maybe about a couple of week before they decided to send us to school by buses.

Q Were all eight other inmates taken before the adjustment committee or temporary release committee at that time?

A In January, yes.

Q You stated that you met an adjustment committee in February of 1974.

A Yes.

Q Were you given any notice, either orally or in writing, regarding charges before you met this group?

A No, I was not.

Q What type of discussion did you have with the correction officers at that meeting?

A I don't know whether we call it a discussion or not or even -- the only major discussion was about the purchase of my batteries. I had purchased out of my pocket batteries which the institution had been supplying but had cut me off for these batteries in January. I had discussed this matter with Mr. Holumzer. He told me that there was a new financial officer at the institution and he had stopped all of these extraneous expenses and until such time that they can get the reason stated again I would have to do without batteries from the institution. I asked him "What do you

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expect me to hear with or how do you expect me to have any communication in school?"

He said "Why don't you buy your own and see what happens."

So I purchased them with my own $15 a week.

Q That was one infraction that was discussed?

A Yes. That infraction, I don't know how -- the infraction was that I was buying batteries without permission, and yet we were allowed to shop for all of our personal needs. It is still a confusing thing to me. I am glad I didn't have to buy my nitroglycerine tablets, which I keep in my pocket for my heart condition.

Q Were any other matters discussed at that hearing?

A The only other matter -- it was not discussed. It was said "You left the facility without permission." That was a shocker to me. I never saw a prisoner leave a prison without permission or authorization in my life. Also, they mentioned that they had received a letter from the director of the American Heart Association when I had gone to one of their group outside meetings, where they were holding a -- trying to get funds, and I acted as an assistant in taking blood pressures. And the people who were -- both the nurses and also the people in the American Heart Association were very much amazed on how I was taking

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these blood pressures because I was not using my ears or a stethoscope, and a doctor said he thought it was a wonderful idea.

Q He went this letter to one of the officers?

A She did. It was a woman director, isn't this letter to Mr. DaSilva and Mr. Da Silva said he received a commendation and he said "You were there without permission." Not leaving me any opportunity to explain or find out what it was all about. I was completely confused.

Q When they first indicated that you had left the facility without permission, what were they referring to?

A In my mind I believe they were talking about this American Heart Association. But they seemed to be referring to -- I mean now I understand that they were referring to something else. And that was never discussed with me.

Q What else were they -- what is your understanding now about what they were referring to?

A Well, from the papers, they are talking about a library incident. I used to go to the library quite often for research and for studying purposes. We have to do that because the institution refused to prescribe to the American Journal of Nursing which was part of the recommendation of the nursing school for me to have, as well

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as other things which the institution refused to give me. And I had to pick up these copies of these various articles from the library. At any time that I ever have to go to the library, I would either ask or it would be a day in which I would be driving some of the other inmates to the work assignments and then I would go to the library.

Q. Would you return to the institution after you went to the library?

A Yes.

Q Is it your understanding that this is what the correction officers referred to when they said that you left the facility without permission, that you left the facility to go to the library without permission?

A I don't know what they meant because I had asked Mr. Holumzer on the phone at one time, "Would you mind if I went to the library tomorrow?"

And he said, "No. Go right ahead."

And then another particular incident I had called up and -- regarding the American Heart Association. He asked me to refer to Mr. Guempel, the parole officer. I had talked to Mr. Guempel on the phone and I told him what I had to do and he says "Okay. Go to it. I will take care of it." Those were his words.

Q During the seven years that you were incarcerated

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in maximum security prisons, how many disciplinary infractions did you have?

A I think I said some thing like seven at one time. But it isn't that. It was f[illegible]

Q What types of things did you receive infractions for?

A One infraction was -- the first infraction I ever got was that I was not-- I was not there when the officer called for taking the presence, taking the absent list. But it was found out I was there but he didn't know I couldn't hear.

The second one was my door was not closed when I went to lunch.

A third one was I had stolen a bowl of milk.

The fourth one was I had three pair of pants instead of two.

Another one, I had gone to the commissary, which was on the right day but the very wrong hour.

Q Since you have been returned to Greenhaven , have you received any disciplinary infractions?

A No. But I have received two infractions.

Q Two infractions?

A Two infractions.

Q What were those?

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A I had too many paintings in my cell and it was called dirty.

The second one was that I was allowed to put my paintings on the window outside of my cell area on the gallery and the next day another officer came in and gave me an infraction and said I can't have them there. So I sent all of my paintings and my equipment home.

Q In March of 1974, had you indicated to the correction officials that you desired to get a better functionir battery, hearing aid equipment and battery?

A In March of '74?

Q Right, or in the spring of '74.

A The spring of '74. That would be at Fishkill.

Q Correct.

A No. I had told them prior to that, in December of '73, that -- that was December 26th, when Dr. Wang of Fishkill, when I went in for an examination, said the instrument is no good for you and he made out a slip to the work release people and said "Get him a new hearing aid immediately." Which was never taken care of until, I believe May of this year.

MS. BLOOM: That is all.

THE COURT: All right. We are going to recess now until 3:15.

(Luncheon recess.)

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THE COURT: Have we finished with the plaintiff?

MR. BLOOM: That's right. I was finished. He is my witness.

THE COURT: All right. Do you want to proceed with yours?

MR. BIRCH: All right. I would just move at this time to dismiss the action for the plaintiff's failure to make out a prima facie case. The plaintiff has admitted having a hearing, admitted the charges and he admitted receiving a decision of the case, and this case occurred several months before the Second Circuit came down with New Kirk and I think, as the law stands at that time, he has received all the process that he was due in this situation.

THE COURT: Has he received a hearing? Did he receive the notice of the charges?

MR. BIRCH: There is not testimony to that effect, but he did receive a hearing and he admitted --

THE COURT: What were the charges?

MR. BIRCH: The charges were that he violated his bounds -- the bounds of confinement agreement.

THE COURT: And he had notice of that charge?

MR. BIRCH: He may not have had exact notice, with you the incident occurred several days before. He was aware. He was aware -- he admitted his signature on a piece

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of paper that told him he is not supposed to go beyond the direct route or outside of the direct route between Fish Kill and the college, and he admitted going out.

THE COURT: And you say all he was entitled to is a hearing, without prior notice? Is that it?

MR. BIRCH: I am saying that he may not have been given oral notice but he had constructive knowledge of what the charges were and he had been advised earlier about the regulations of the program and he admitted that.

THE COURT: And then he had a hearing and then he was given notice as to the decision, is that it?

MR. BIRCH: Right.

THE COURT: What do you say, Miss Bloom?

MS. BLOOM: I would say that there has been no showing that he received any notice of the charges. There has been evidence that three inmates were placed in a hold status and according to the plaintiff he had no reason -- he had no knowledge of why he had been placed in that status. He was given no assistance of any sort at the hearing, and as a person with a hearing disability, I feel that the testimony establishes that he needed that type of assistance.

He had no opportunity, because he had no notice, to present evidence in a meaningful fashion and he received no notification of the decision of the committee other than

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that he was expelled from the program. He wasn't notified until almost two weeks later that he was to be transferred to another institution and he was notified of that fact when the officer came to his cell and said, "Pack up. You are ready to leave."

I would think that this does not constitute due process.

THE COURT: What about the fact that the New Kirk decision came down after this hearing? Probably not retroactive.

MS. BLOOM: We can still look at the Sostre decision, which did at least say that an individual is entitled to notice of charges. We can also look to New York State Correction regulations, which were enacted in 1970, which indicate that in a proceeding in which someone is removed from a program that individual is entitled to a whole range of procedural protections, including written notice of a charge, advisement of the right to remain silent, the assistance of an officer to assist the individual in preparing a defense --

THE COURT: An officer?

MS. BLOOM: An officer or, the way the law reads, and I mean to introduce it into evidence, a correction officer, which is not quite a counsel substitute but is a

person designated to assist the individual in the collection of evidence. And the individual is entitled to be advised that he has the right to remain silent. He is also entitled to a written decision. And these regulations had been in effect since 1970 and there is no indication that, if these were introduced as a standard, that they were followed.

MR. BIRCH: If I may speak, your Honor, first of all the way I understand the procedure, there has been no allegation at all before this minute about violation of correction regulations. It was not pleaded and therefore it is not in front of the Court.

Second of all, the law at the time --

THE COURT: The claim was that he was denied due process, isn't that so?

MR. BIRCH: Correct. And at the time that Mr. Snyder was transferred, the Southern District had decided in Wells v. McGinnis, 344 Fed. Supp. 594, a 1972 case, Judge Gurfein held that a transfer from one facility to the next was within the States' authority and therefore that a hearing was not required.

Judge Curtin, I believe, from either the Western or Northern District in the Haymes case at that time, had ruled that a transfer was -- from one institution to the next without a hearing, was also okay. And in April of

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'74, several weeks after Mr. Snyder's hearing and his transfer, Judge Lasker also held that a plaintiff's transfer from Greenhaven, where he was in the Work Release Program, to Clinton was proper notwithstanding a hearing.

THE COURT: Notwithstanding a hearing?

MR. BIRCH: I'm sorry, your Honor. Notwithstanding the fact this was no hearing.

THE COURT: What case was that?

MR. BIRCH: S-c-h-u-m-a-t-e against People of the State of New York, 373 Fed. Suppl. 1166, decided April 12, 1974.

And there was also a district case from Connecticut, B-e-a-t-h-e-m v. Manson. The only district court case at that time that held a hearing necessary was the New Kirk case, which was a district case. The law was very up in the air at the time.

I think it is clear that the people in the facility in all good faith, tried to comply with the law and, they can't be held and no one should be held for what the Second Circuit did later on several months later.

THE COURT: Well, as Miss Bloom points out, there is the Sostra case pursuant to which the State itself promulgated certain procedural safeguards. Is that so?

MR. BLOOM: That's correct.

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MR. BIRCH: But that was not held to apply to a transfer case.

THE COURT: I thought you said that applied to a transfer.

MR. BLOOM: One of the regulations regarding superintendent's proceeding states that at the end of a superintendent's proceeding the correction officer has the power to remove someone from a program, and I would take that to mean that this is the type of proceeding that should govern a removal from a program or a transfer, which is even greater deprivation than simply a removal.

In this case we had both.

MR. BIRCH: I would imagine that no court has held Sostre applicable to a transfer case at that time and that due process safeguards -- no court had held that except in the Southern District in New Kirk.

THE COURT: Who was the Judge in that case?

MR. BIRCH: I'm not sure, your Honor.

THE COURT: All right. The motion is denied. Put on your witness.

xx ALBERT C. HOLUMZER, called as a witness by the defendant, being first duly sworn by the Clerk of the Court, testified as follows:

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xx DIRECT EXAMINATION

BY MR. BIRCH:

Q What is your present position?

A I am A correction counsellor at the Fish Kill Correction Facility Work Release Program.

Q And how long have you held that position?

A I've been a correction counsellor there since December 1973.

Q And what is your prior experience and training?

A Prior to that I was a psychiatric social worker for six years and for a year prior to that I was a case worker, all for the State.

Q What was your relationship with Charles Snyder?

A I was his correction counsellor. He was assigned as one of the people I worked with.

Q And did you have that relationship with him from starting when?

A I started work in December. I was probably in the first of January 1974 unless transfer to Greenhaven.

Q How often were you in contact with him?

A I spoke with Mr. Snyder either in person or on the telephone at least once a week.

Q Did there come a time in February 1974 that you had a conversation with Mr. Snyder?

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A Yes. Mr. Snyder attended Dutchess Community College and he asked permission to go on a weekend, one to study in a library, I believe on a Saturday, and also that same weekend, on a Sunday, to participate in a heart fund drive.

THE COURT: Participate in what?

THE WITNESS: A heart fund drive being conducted through the college. I believe the nursing students there were involved in it. The nursing students there were involved in helping in the heart fund drive.

Q Did he ask you your permission?

A Yes. He asked me permission to attend -- to leave the institution on this weekend and I told him that I could not give him permission to go, that he would have to get that permission from his parole officer since it was a function in the field outside of the institution.

Q Do you know if his parole officer gave him that permission?

A Not to my knowledge. To my knowledge he did not give him that permission.

MS. BLOOM: I object.

There is no foundation for the question.

THE COURT: I didn't get that.

MS. BLOOM: That is hearsay. There is no founda-

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tion for establishing that he has knowledge of knowing whether or not the officer gave him the permission or didn't give him the permission.

THE COURT: The question to the witness was what?

MR. BIRCH: I asked the witness whether he knew whether the parole officer had given the plaintiff permission to leave the institution.

THE COURT: Well, if he knows of his own knowledge.

Do you know of your own knowledge?

THE WITNESS: To my knowledge he did not give him permission.

Q Would you have known had he given him permission? Did you usually converse with the parole officer about such things?

A Yes.

Q And would he have told you?

A If permission was granted prior to the event happening, yes, he normally would have notified me, most likely by -- the procedure for Mr. Snyder to leave the institution would have been for the parole officer to write a memo to the supervising correction officer, and I would have received a copy of that memo, so I would have been aware

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of him having received permission to leave.

Q There were other instances? The normal procedure was to get a memo.

A Right. That would be given to the supervising correction officer.

Q And you received no copy of such memo?

A No.

Q Are you aware of other infractions of the regulations that Mr. Snyder was involved with?

A Yes. There were other instances that Mr. Snyder-- one instance I am aware of where he had ordered of, I believe it was a cord for a hearing aid, and had billed it to a correction counsellor, not myself, and had charged it to him, which was against the rules. Any equipment of this nature or any medical treatment of this nature should -- the normal procedure is to request it through the institution, and if the institution cannot provide this service, then an appointment is made with an outside source or ordered through an outside facility. That was one instance that I am aware of that Mr. Snyder did not follow the standard procedure, the regulations of the facility.

Q Were you aware of the reasons for this procedure, where the inmate had to request permission first?

A Well, so we had, number one, knowledge of his

whereabouts and, number 2, so that we are responsible for providing medical treatment, proper equipment that is needed by the inmate.

Q Are you aware of any other infactions of the regulations?

A There were -- there was an instance in January where Mr. Snyder --

MS. BLOOM: I object. I question the basis for the witness' knowledge.

THE WITNESS: Should I respond?

THE COURT: Yes. Tell us only what you know of your own knowledge, not what somebody told you.

THE WITNESS: Well, I am aware of many things, one because Mr. Snyder in normal circumstances discussed with me problems that he was having --

THE COURT: I see. All right.

THE WITNESS: -- with the institution.

THE COURT: Something the petitioner told you.

THE WITNESS: In most cases this would be true. Or another way I would be aware of it is I would get copies of memos where he was reprimanded.

THE COURT: I see. All right.

A The January incident, Mr. Snyder was utilized as an inmate driver. He drove other students to college

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and I believe also some men to work, and there was a problem with the vehicle returning late to the institution. And Mr. Snyder as the driver was responsible for seeing that the vehicle was returned on time. And he was reprimanded in that case for the vehicle being returned late and I believe he was no longer allowed to drive the institution vehicle after that.

Q Are there any other incidents that you remember?

A There were other incidents. I can't at this moment state any specific ones. There were many incidents where Mr. Snyder wanted to go on -- to study on weekend, as this one weekend in February, and he would sometimes -- he would ask me sometimes and I wouldn't give him my permission because it was specifically the parole officer's duty.

I couldn't say specific instances whether he went or did not go on those weekends, but he was aware that he should ask the parole officer and frequently asked me instead.

It is not actually a violation, but --

Q What is the nature of the job of a correction counsellor?

A All right.

In the work release program, the correction

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counsellor normally deals with any problems the inmate has within the institution, dealing with the institutions, helping -- in Mr. Snyder's case one thing, he had problems, difficulties obtaining batteries for his hearing aid. That was handled through me; receiving funds for his expenses when he was attending college. That was handled through me, through the accountants.

Basically I dealt with any problems that came up in the institution and the parole officer would handle anything to do with problems that occurred in the community.

THE COURT: Would you keep your voice up, please? I don't hear you.

THE WITNESS: All right.

Q Was it part of your function to be aware of and try and help any particular inmates adjustment to the work release program?

A Yes, it was.

Like I said, any problems that the inmate was having in adjusting to the program, my job was to discuss these with him and, where possible, counsel him as to how he could better handle the situation or point him in the right direction.

Q What is your professional opinion of Mr. Snyder's adjustment to the program?

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A Overall I have to say that his adjustment was unsatisfactory, basically, because of his direct efforts to either bend the rules or to utilize them to his best advantage as opposed to dealing with things in the prescribed manner.

Q Did you ever tell him that further infractions would possibly result in his being removed from the program?

A I discussed the incident in February with him and told him that he was being, at least from my viewpoint, on a probationary period, that his adjustment had been a question from previous incidents, and that I felt that he should, you know, try to better his way of handling things, well, dealing with the institution.

Q Are you a member of any of the temporary release committees that saw Mr. Snyder?

A No.

Q What was the date, if you remember, in February of 1974 when you spoke to Mr. Snyder about -- withdrawn.

Did you have a meeting or did you talk with Mr. Snyder at any time in February 1974 about the incident where he left the facility without permission, allegedly left the institution without permission?

A Right. I normally work on Tuesday nights, to be available for the inmates because they are out during the

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day, and the Tuesday night following that weekend I spoke with Mr. Snyder about his having gone out, as I remember, specifically to the heart fund campaign on Sunday. In fact he commented to me about going out, and I had told him that I had not given him permission and that he had -- that he was supposed to get permission from his parole officer.

And I remember at that point him commenting to me, since it was by telephone, that I talked with him, that he might have misunderstood. He mentioned that on the phone, on the telephone.

Q Did you advise him that there would be a meeting of the temporary release committee about that incident?

A I advised him that he was going to be seen about it. I don't know if I told him specifically when it would be.

Q But you said --

A That he would be seen by the temporary release committee.

MR. BIRCH: I have no further questions.

xx CROSS EXAMINATION

BY MS. BLOOM:

Q You stated that you would not normally give inmates permission to go on field trips or study at the library.

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A Under normal circumstances, no.

Q What was the normal procedure that was followed for inmates to get this permission?

A Normally for anything involving activities outside the institution they would request it of their parole officer, their parole officer would investigate to see what the activity was, to see where they were going to be, and the parole officer would then write a memo to the supervising correction officers to release the inmate on that date and I would receive a copy of that memo, so I was also aware of what was happening.

Q And you say that the two February dates in question when Mr. Snyder went to the library and went to a heart fund drive you didn't receive those memoranda?

A No.

Q How could Mr. Snyder have left the facility if there had not been some communication through one of the officers that he was permitted to leave?

A I don't know.

Q Wouldn't that be considered an escape from the facility if he had left without anyone's knowledge?

A Under normal circumtances, yes. But with the work release program the correction officers at the facility were used to inmates frequently leaving the institution

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on a daily basis, and it was not an unusual thing for an inmate to say "I have such a program." Normally the correction officer should check the roster of memos or the list of names of inmates allowed to go out that day before he would release them. But it was possible under the system we used at that time for --

Q I believe the dates in question are a Saturday, when he went to the library, and a Sunday on the heart fund drive?

A Correct.

Q Would it be normal for inmates to go to work and go to school on Saturday and Sunday?

A Some inmates work seven days a week.

It was possible under certain conditions for an inmate to go to the library on Saturday with permission. There are voluntary programs that take place only on weekends that inmates do attend. So it is very common for inmates to be leaving the facility on the weekend.

Q And it is common for them to leave even though there is no authorization for them to leave?

A It happens.

Q Often?

A I can't say. I don't know how often it happens. It does happen.

Q Have you ever heard of it happening in any other case?

A Yes.

Q How often?

A I really can't judge. It has happened.

Q Will you estimate? You've been at Fish Kill now for over a year. In that period of time how many times have you heard of this happening?

A Off the top of my head I would say a half dozen times altogether.

Q And this would have been two out of those half dozen?

A Yes.

Q You stated that you had another conversation with Mr. Snyder regarding a bill for a hearing aid?

A The incident took place before I was Mr. Snyder's correction counsellor.

Q So you have no direct knowledge of that?

A Only of memos that were in his file that I read, that I went back through his file to familiarize myself with his background.

Q So you have no direct knowledge of the hearing aid --

A It did not directly involve me. It involved

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another correction counsellor.

Q Regarding the January incident, as you stated, regarding the problem of inmates returning from late and study release assignments, did you have a personal conversation with Mr. Snyder regarding this matter?

A I believe I did. There were other inmates who also rode in the car who were also in my case load and I discussed the incident with them and I believe with Mr. Snyder.

I would have to check the record to see if I actually did.

Q Do you keep a daily log on who you have contact with in this prison?

A I keep what is called chronological notes, notes that -- every time I see an inmate I write down when I see him and why I see him, and that is typed into the record.

Q Do you have that with you today?

A No.

Q How many inmates did you meet with in January regardint this lateness problem?

A I remember two other inmates besides Mr. Snyder that rode in that vehicle that were assigned to my case load, and I'm fairly certain I discussed it with all three of them.

Q Would you consider one alleged infraction regarding leaving for the library without permission to be a minor infraction, a major infraction? How would you classify it in a disciplinary sense?

A Any time an inmate leaves the institution without permission I would say that is a major infraction.

Q You stated that in your professional opinion Mr. Snyder's adjustment was unsatisfactory in that he attempted to bend the rules to suit himself.

What specific facts do you base that opinion upon?

A The incident with the vehicle, the incident with the hearing aid cord.

Q Were you personally involved in the hearing aid cord?

A No. That was from the record.

Q Okay.

A In obtaining batteries for the hearing aid, Mr. Snyder had difficulty, and there were many incidents when I told him specifically that he should get them through the institution, that Iwould make arrangements, and he instead would stop, buy them for himself and then ask for money to pay for them, when he had on many occasions been specifically instructed by me that they would be provided

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by the institution, which they were.

That's another one. The final incident, when he was last seen by the temporary release committee in terms of being out of his bounds of confinement, that also was a specific incident where his adjustment was unsatisfactory.

Q Were you personally involved in that incident?

A I got copies of the reports, which is standard procedure. I would get a copy of the reports submitted by the parole officer.

Q But you had no specific involvement in that?

A No.

Q Did you have any specific involvement in any of the temporary release committees that were held?

A I'm not sure I understand.

Q Were you a member of any of the temporary release committees?

A No.

Q Did you at any time prior to the meeting of these two or three temporary release committees inform Mr. Snyder regarding what the charges were, what charges had been placed against him or what was the subject matter of the meeting?

A The one in February, where I had been involved, prior to the weekend, I discussed that incident with him, you

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no, and I remember at that time him saying that he thought he misunderstood me. I did discuss that prior to the meeting. I told him that he was going to be seen on that. I don't think I informed him of the specific charges or of the date, you know, when the hearing would be held.

MS. BLOOM: That's all.

THE COURT: Anything further?

MR.BIRCH: No.

(Witness excused.)

THE COURT: Next witness.

MR. BIRCH: May this witness stay in the courtroom?

THE COURT: Yes.

xx A N T H O N Y D A S I L V A, called as a witness by the defendant, being first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. BIRCH:

Q Mr. Da Silva, what is your present position?

A I am a program coordinator for the Work Release Program at the Fish Kill Correctional facility.

I am also the chairman of the temporary release committee at that facility.

Q How long have you held that position?

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A Since November of 1973.

Q You said you are the coordinator of the work release program?

A Yes.

Q What does that mean?

A That is the Chief Administrator.

Q And who do you report to?

A I report to the superintendent and to the Deputy Director of Community Services in Albany.

Q In Albany.

A Right.

Q The only officer at the institution you report to or are responsible to is the superintendent, is that correct?

A That's correct.

Q What is your prior background and experience?

A I was with the Department of Welfare for two years, Probation Department in Kings County for approximately two years, parole officer and senior parole officer for seven.

Q And what is your training?

A 36 graduate credits in sociology and psychology and finishing up my masters now.

Q In what?

A Criminal justice.

Q When was the first time you met Mr. Snyder?

A Well, the first time -- I actually didn't speak to him the first time I met him. I knew him as one of the inmates within the program. The first time I actually met with him on the formal basis was in January of '74.

Q What was the context of that meeting?

A At that time he appeared before the temporary release committee.

Q What was discussed there with him?

A His late return from his program, the school program. Mr. Snyder was an inmate driver and the cars had been returning late to the facility from school. This was discussed with him first by his parole officer and then, when it continued, he was brought before the temporary release committee.

THE COURT: When you say "late", what do you mean?

THE WITNESS: Approximately an hour, an hour and a half late. The cars were due back at a certain time to the facility, and the cars would be getting back late, and we wanted to know why.

Q What difficulty did it cause when they came back late?

A One of the major difficulties was that it extended beyond the 14-hour time limitation that is set by law for an inmate to be out of the facility. This is one of the major legal difficulties.

The other difficulties were that we did not know what these men were doing while they were out beyond their prescribed time, and we have a duty to know what they are doing.

Q In January '74, when you met with Mr. Snyder, was he given an opportunity to explain?

A Yes, at the hearing, he was.

Q Did he?

A Yes, he did.

Q What did he tell you?

A He was -- he said that he was under pressure from some of the inmates, who wished him to do things, such as pick them up at other locations or bring them back, stopping off to get something to eat, et cetera. He would not give the name of the inmates who were putting the pressure on him.

Q And what was the result of that meeting?

A At that time we advised him that this had continued for some time --

THE COURT: How much time?

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THE WITNESS: For approximately one month.

THE COURT: How often during the month?

THE WITNESS: Just about every day, your Honor.

THE COURT: Every day for one month?

THE WITNESS: Just about, right.

At that time he was advised that he was being placed in a probationary status for thirty days and would not be allowed to go on furlough for 30 days and would no longer be used as an inmate driver.

Q Did there come a time in February when Mr. Snyder met the temporary release committee?

A Yes.

Q And were you a member of the committee then?

A Yes, I was.

Q And what was discussed then?

A At that time we discussed Mr. Snyder's leaving the facility on the weekend, I think it was the 8th and 8th of February, to go to Dutchess Community College despite being told by his correction counsellor that he could not do this without specific approval from his parole officer.

Q How did you know that he had no permission from his parole officer?

A His parole officer said he did not give him that permission, and his counsellor advised me that he had had

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this discussion with Mr. Snyder earlier.

Q Was Mr.Snyder given an opportunity to discuss this charge?

A Yes.

THE COURT: What date was this?

THE WITNESS: I believe it was the weekend of the 8th and 9th of February. We saw him a few days later.

Q What did he say to you, the committee?

A He said that he was given permission by one of the officers to go, that he had spoken to his counsellor about it, he didn't understand the counsellor, he couldn't hear him very well, and that he had also spoken with the correction officer on the floor and the correction officer had given him permission to go.

Q Could Mr. Snyder hear you at the time? Did he have trouble communicating?

A He could hear us. He was able to respond to our questions and to answer the questions.

Q And what was the result of that February meeting?

A At that time we adivsed him that he was again being placed on a 30-day probationary period, he would not be going on furlough, and should there be any further infractions on work release, we would probably recommend his removal from the program.

Q Why did you not recommend his removal at that time?

A Well, we didn't believe that Mr. Snyder didn't understand his counsellor's instructions, but he did say that he didn't hear him. We thought there was a possibility that he did not. And we decided to give him the benefit of the doubt in that instance.

But we did advise him very specifically that if any kind of infraction occurred again we would be recommending his removal.

Q If an inmate had no excuse at that point, what would have been the usual result?

A We would have recommended his removal.

Q Did there come a time in March that the temporary release committee saw Mr. Snyder?

A Yes.

Q Were you a member of that committee?

A Yes, I was.

Q How did it come about? Can you tell the Court how it came about that you found out that there had been another alleged infraction of the regulations?

A Yes. His parole officer advised me he had received a telephone call from a Mr. Gary Feiffer, who is an assistant dean at the Dutchess Community College. Mr.

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Feiffer had apparently seen Mr. Snyder in the process of getting a traffic ticket in the Town of Pleasantville and this was outside his bounds of confinement, the area in which he is supposed to stay.

I asked the parole officer to write it up to me and we would use this as a basis for seeing Mr. Snyder before the committee, and the parole officer did write that up.

Q I show you Exhibit C in my original affidavit to the Court. Is that the memo that was involved (handing)?

A Yes.

Q Did you instruct Mr. Snyder's parole officer to advise Mr. Snyder that he was going to meet the temporary release committee?

A I instructed the parole officer to place Mr. Snyder on hold when he came back from the facility that night and then to explain to him why he was being placed on hold and what would happen after that.

Q What was the date of that?

A It was the day before. I think it was the 26th of March.

Q On the 27th of March, at this hearing, can you tell me what happened?

A We discussed two things with Mr. Snyder.

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The first thing we discussed was whether he was involved with the smuggling of letters from an inmate who was being placed on hold in the facility to Dutchess Community College to a girlfriend apparently at Dutchess Community.

He denied that he was involved in that. We subsequently learned there were two other inmates who did smuggle that letter out.

The second thing that we discussed with him was his getting the traffic ticket and the going out of bounds --

THE COURT: Excuse me.

Tell me about the letter again? I didn't get that.

A There was an inmate, a student at Dutchess, who was in a hold status. Some letters were being smuggled from the facility to his girlfriend at Dutchess Community. We believed it was one of the students at Dutchess. We discussed this with Mr. Snyder. He said he did not take the letters. We subsequently learned there were two other inmates who had been taking the letters out. Mr. Snyder was not.

The other item we discussed was his being out of his bounds of confinement and his getting the speeding ticket and driving the automobile.

Q Did he respond to the charges?

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A Yes. He admitted that he had been driving the automobile. He said that he had gone to Dutchess Community College early that morning on the 26th, that he had met a Mrs. Herman there who is a student at the school and who apparently is a friend of Mr. Snyder's. She had apparently been feeling ill and she asked if he would take her home.

He said that he did take her home as a humanitarian gesture, I believe is the way he put it.

We asked him why then was he returning back to the college with Mrs. Herman and her two children in the car.

He said that she had gotten better shortly after her arrival at home.

We asked him if he knew he was violating the agreement. He said he did.

We asked him if he recalled that we had given him a warning the last time that he would be removed and he said that he did.

Q Did he explain why the children were in the car?

A He said that they were going to stay with the mother during the courses at Dutchess Community.

Q He didn't tell you then that he was taking the children to school, public school?

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A No. He said they were going to stay with her at the Dutchess Community College. We asked the ages. I think they were about ten or 12, that age.

This was not the first time that we -- we understand it was not the first time that Mr. Snyder had gone to Mrs. Herman's home. Mr. Feiffer, when he called us, had said --

MS. BLOOM: I object. This is hearsay.

THE COURT: "We understand"? What does that mean?

THE WITNESS: Well, Mr. Feiffer, when he spoke to us --

THE COURT: Mr. Feiffer?

THE WITNESS: The assistant Dean at Dutchess Community. He said that he had seen Mr. Snyder before in Plesantfille, had not told us anything about this because he did not want to get her into trouble, but when he saw it continuing he then decided to let us know.

THE COURT: And when did he let you know?

THE WITNESS: On the 26th.

THE COURT: The same day?

THE WITNESS: No. This was -- he had seen him on several occasions going to Pleasantville. He let us know on the occasion that he saw him getting the ticket.

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We did not charge Mr. Snyder with the others because we did not have any specific information as to what days they occured or what time, and Mr. Feiffer didn't recall what days they were.

Q Have you dealt with Mr. Feiffer before?

A Yes.

Q When Mr. Snyder was at this hearing, did he respond to you? Could you tell if he could hear you? Did he protest that he couldn't hear you?

A No. He responded to us and one of the other members of the committee asked him if he could hear, and he said yes, he could.

Q Did he ask for assistance?

A No, he did not.

Q He didn't ask for another counsellor to help him?

A No, he did not.

Q Can you describe the program a little, the purpose of work release?

A Well, basically it is a way of helping a man get back into society. It is a kind of a bridge between the institution and the community, where a man has an opportunity to obtain employment, to get back into work habits, to learn trades, to go to school, et cetera.

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THE COURT: How long had he been in the program?

THE WITNESS: He started at Greenhaven in June of '73, and there had been several violations of a relatively minor nature from the beginning.

This continued up to the incident of the 27th of March of 26th of March.

THE COURT: Of '74?

THE WITNESS: Of '74, right.

Q What is the normal census of the program? How many inmates are usually involved?

A Approximately 80.

Q Is there a demand for it, a high demand, many people trying to get in?

A Yes.

Q Do you screen these or does someone screen these people before they are allowed?

A Yes. They are screened on several levels. They are screened at the sending facility.

In My Snyder's case it would be Greenhaven. Then they are screened at Albany and then they are sent to the facility after approval at both locations.

THE COURT: What is the eligibility requirements again for such a program?

A A man has to be within oneyear of his parole

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eligibility, one year before he can be released on parole or before he can be conditionally released.

Q Have many people been removed from the program?

A About 20 percent.

THE COURT: And Mr. Snyder met that qualification, he was a year from parole?

THE WITNESS: Yes, he was. I believe he was due to see the Board of Parole in April '74.

THE COURT: And he has lost that right as a result of this?

THE WITNESS: No. He saw the Board in April and they held him for one year, I believe, to April of '75.

THE COURT: On what ground?

THE WITNESS: I don't know what grounds they gave.

THE COURT: It didn't have any relation to this violation?

THE WITNESS: I don't know. We have had men that violated who have been paroled and we have had men who have violated and have not been paroled. It is very hard to say what the Board is going to do.

Q I show you Exhibit A of my earlier affidavit. Could you describe what that is?

A It is the original description of Mr. Snyder's

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work release program. No. I beg your pardon. I thought this was -- no. This is the parole summary. There is a summary given by the committee to the Board of Parole when he saw the Board in April of '74.

THE COURT: Summary of what? What went on at that meeting?

THE WITNESS: What went on during his stay in the work release program.

Q This was in April '74?

A Right.

Q It was written by whom?

A By Mr. Gumpel, who is Mr. Snyder's parole officer.

Q And you signed it?

A Right. The committee signed it.

Q And you sent this to the parole. And can you just very briefly describe its contents, if you recall?

A Right. It says that he is in an educational release program, how he was doing at the program, that his work at the program was adequate although he did fail a biology lab course. Arrangements were being made to have him take another exame in biology. It says that his adjustment was marginal, and they gave a couple of examples why. And then finally notice was -- before that incident -- it

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gave several examples of Mr. Snyder's evaluation of work release regulations while he was at Greenhaven and while he was at Fish Kill, up to the beginning of February 1974.

Q I show you Exhibit B. Can you tell me what that is, who it is addressed to and who wrote it or who signed it?

A Okay. This is a written notification to Mr. Snyder of the results of the February temporary release committee hearing. It is signed by me.

Q And could you give us a brief description?

A It says that on February 8 he had contacted Mr. Holumzer regarding going to the library at Dutchess Community College. At the time Mr. Holumzer said he did not have permission to go but should contact his parole officer.

February 9th he left the facility.

On February 10th he again left the facility to take part in a community program. No permission had been granted to this.

It then says as a disciplinary measure the committee has decided you will be unable to be approved for a furlough for a period of 30 days, commencing February 10th, 1974. Should this type of activity continue further, more serious disciplinary measures will be taken.

Q And this is addressed to whom?

A Mr. Snyder.

Q And do you know if he got it? Or what was the usual procedure for his receiving it?

A What happens is that the memos are sent down to the correction supervisor, who in turn sends them to the officer on the floor, who gives them to the inmate. It is the normal way of doing that.

Q And Exhibit C we had, I believe.

Exhibit E, what is this?

A This is my report to the superintendent of the Fish Kill facility advising what has happened with Mr. Snyder since he got to the facility and our recommendation that he be removed from the program.

Q And that's how many pages?

A Three pages.

Q And one last thing. Exhibit E of the affidavit is what?

A This is a memo to Mr. Snyder, dated March 29, 1974, advising him of the decision of the temporary release committee meeting, recommending his removal from the program.

Q And this is addressed to whom?

A Mr. Snyder.

Q And what was the usual procedure for his receiving this?

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A The same as before, that a memorandum would go to the correction supervisor, who would give it to the correction officer, who would give it to Mr. Snyder.

Q Can you just tell the Court what a bounds of confinement agreement is?

A Right. By law, any inmate who is engaged in a temporary release program is restricted to certain specific areas, usually from the facility to the area where the program occurs and then back to the facility.

That is what we call bounds of confinement.

Q What is the usual policy for discussing bounds of confinement with the inmate?

A The specific bounds of confinement are discussed with the inmate business parole officer during the beginning of the program, justbefore he begins the program.

Q What is the importance of staying within this area?

A It is mandated by law that there be certain areas that he is limited to.

Q And do you know where Mrs. Herman's house is in relationship to this direct route?

A They are outside. Mrs. Herman lives in Pleasantville and Dutchess Community is in Poughkeepsie. It is, I would say, approximately ten miles, but I'm not sure of the

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exact --

THE COURT: How far beyond the boundary?

THE WITNESS: It would be approximately ten miles. That's not -- I'm not positive as to how far beyond, but I believe that's the figure.

Q What was your opinion of Mr. Snyder's adjustment to the program at the time that you decided that he should be removed?

A I thought it was poor. I thought it was a poor adjustment.

Q Why?

A He was a very manipulative man who wished to begin things for himself without regard for any adherence to rules, program regulations, the effect it may have on others.

He wished to get things for himself without caring what happened to the other men in the program. I think there is a relationship.

With Mr. Snyder's violating, with the being known that he was violating, this has -- this could result in an adverse reaction from the community as well. We were starting to get some adverse reaction from the college on this.

Q From whom?

A From the college, from Dutchess Community.

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THE COURT: On what?

THE WITNESS: On the fact that it was fairly well known at the school that he was leaving the area that he was supposed to stay in and that no action of any kind was being taken. They did want us to know what are you doing about this?

Q How did his adjustment compare with that of other inmates?

A It was poor.

MR. BIRCH: No further questions.

xx CROSS EXAMINATION

BY MS. BLOOM:

Q Mr. DeSilva, do you have experience in disciplinary proceedings in correction facilities?

THE COURT: Do you have experience what?

MS. BLOOM: Regarding disciplinary proceedings in correction facilities?

A Yes.

Q Are you familiar with the New York Code of Rules and Regulations promulgated by the New York Department of Corrections relative to disciplinary proceedings?

A Relatively familiar, yes. I am not the chairman of the adjustment committee, but I have taken part in disciplinary hearings.

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Q Do you know how many years this code has been in effect?

A No, I don't.

Q Does there appear to you -- this is Chapter 5 out of that code.

A Correct.

Q What would you say the purpose of an adjustment committee is?

A To determine if a violation of the regulations has occurred and to make a recommendation as to some action, what action, if any.

Q What kind of action can an adjustment committee take?

A They can place a man in keep lock, they can recommend removal from various types of institutional programs.

MR. BIRCH: There has been no showing, your Honor, that this is relevant. This apparently pertains to the adjustment committee and the witness has testified that the things we are talking about were temporary release committee hearings, not adjustment committee.

A The adjustment committee could not recommend removal from a work release program. That is up to the temporary release committee.

THE COURT: What is the procedure for the temporary release committee?

THE WITNESS: When --

THE COURT: When a man is called before it.

THE WITNESS: Basically -- the procedure has been changed within the past six or seven months.

THE COURT: What is it?

THE WITNESS: Right now?

THE COURT: Yes.

THE WITNESS: There is a written series of charges prepared. It is given to the inmate. He signs a receipt for it. It says that you will appear before the committee on such and such a date, usually 24 to 48 hours.

THE COURT: This was after --

THE WITNESS: This was after Mr. Snyder, right?

When that -- when the man appears before the committee, he has the hearing, then there is a written statement signed by all the members of the committee saying the committee has decided such and such and is recommending such and such.

THE COURT: Was that done with Mr. Snyder's case?

THE WITNESS: No, it was not. This began after Mr. Snyder began, I believe in August of '74.

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THE COURT: It began August '74?

THE WITNESS: Right.

THE COURT: After Mr. Snyder was transferred?

THE WITNESS: That's correct.

THE COURT: When was this action filed?

MS. BLOOM: December of 1974.

THE COURT: Mr. Snyder didn't get any written notice?

THE WITNESS: No, he did not. He got a written decision but he didn't get a written notice.

THE COURT: And he was just told to wait in the hold, or whatever that was?

THE WITNESS: No. He stayed on the floor. The normal rule, he wasn't placed in keep lock. He remained in his normal room.

THE COURT: He was on some hold?

THE WITNESS: Right. What I meant was there was an administrative hold placed on him he could not leave the facility without that hold being removed. He was never locked.

THE COURT: How many people were at the hearing?

THE WITNESS: Three.

THE COURT: Yourself and who else?

THE WITNESS: Myself -- the last hearing, Mr.

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Fisher and Mr. McCaffrey.

THE COURT: And what happened at that hearing?

THE WITNESS: At that hearing, Mr. Snyder -- we explained to Mr. Snyder that we had gotten a report from the parole officer. He explained what had happened and we advised him that we would be contacting him shortly.

THE COURT: That what had happened?

THE WITNESS: This is when he had the speeding ticket. We advised him that we had gotten word from the parole officer that there was contact made with the assistant dean at Dutchess Community College that he was observed in Pleasantville apparently getting a ticket from a State Trooper.

The parole officer checked, contacted the State Trooper, learned that the ticket was issued, the date it was issued, what for. We advised -- explained this to Mr. Snyder. He admitted that he was driving the car, that he did get the ticket. He explained that he was doing this because he had given Mrs. Herman from Dutchess Community to her home because she had been feeling ill.

We told him that the ticket was gotten on his return from Pleasantville to Dutchess and he stated that shortly after he got home she had felt better and he was taking her and her two kids to Dutchess.

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Q Getting back to these regulations, you stated that an adjustment committee can't remove someone from a program?

A No.

Q Can a superintendent's proceeding result in removal from programs?

A Yes.

Q And are there specific regulations that have been enacted regarding the procedures to be used prior to such removal?

A Right.

THE COURT: All right. We are going to recess now until 11 o'clock Monday morning.

(Adjournment was taken to Monday, May 19, 1975, at 10 a.m.)

jhrm 1

CHARLES SNYDER,
Plaintiff,
vs. 74 Civ. 5597
PETER PREISER, ET AL,
Defendants.

May 19, 1975
11:15 a.m.

(Hearing resumed.)

A N T H O N Y D A S I L V A , resumed.

MISS BLOOM: Before I continue the cross examination, on Friday there was some question regarding the applicability of Newkirk, as far as when the District Court decision was made. I would like to submit a copy of the final judgment in that case, which indicates that judgment was entered October 29, 1973, which was about four, five months before the hearing occurred in this case.

THE COURT: All right.

MISS BLOOM: There are some sections in this judgment that are crossed out and that indicates modification that the Second Circuit made regarding that opinion.

THE COURT: All right. Show it to your opponent.

MR. BIRCH: I do not think it is relevant. I certainly agree to its being admitted. It referred to only one inmate. This motion was denied, anyway.

THE COURT: I cannot hear you.

MR. BIRCH: My motion was denied anyway on the grounds

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of non-retroactivity of Newkirk. You denied it. I would say this was not a class action. It was a District Court case and there are other District Court cases extant at the time of Mr. Snyder's transfer. So I do not quite see the relevancy of this order.

THE COURT: I gather it is because I asked who the judge was in Newkirk and the date, I gather, last Friday.

MISS BLOOM: That is correct.

xx (Plaintiff's Exhibit 2 received in evidence.)

CROSS EXAMINATION CONTINUED

BY MISS BLOOM:

Q Mr. DaSilva, how many Temporary Release Committee hearings did you participate in last year?

A That is kind of hard to say. The Committee meets on a number of occasions. You are talking, I guess, in disciplinary matters.

Q Correct.

A Probably about 60.

Q Are these meetings recorded in any way?

A No, they are not.

Q Therefore, you are testifying from memory regarding what transpired at these various meetings?

A Well, shortly after the meeting, when we make a

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recommendation, there is a report that is submitted to the superintendent, and that is done about a day or two after the meeting is held. So in that sense it is recorded, but it is not recorded in the sense that there is a stenographer present.

Q On direct examination you stated that you were a member of the Temporary Release Committee that met Mr. Snyder in January of 1974?

A That is correct.

Q Was Mr. Snyder notified immediately prior to the hearing of the charges that were placed against him?

A Not in January '74, no.

Q What were the charges that were placed against Mr. Snyder at that time?

A At that time he was coming back late from his program and we discussed with him his late return.

Q Were other inmates seen by the Temporary Release Committee regarding their lateness?

A Yes.

Q Would you describe the inmate driver system to us? I take it that is the system or the group that was coming back late.

A Yes. The system has changed somewhat. At the time Mr. Snyder was the driver he was given permission to take a group of inmates from the facility up to Poughkeepsie. There

were inmates who were going to Marist College, Dutchess, and there was one inmate who worked in, I believe it was, a drive-in, a car wash place on the way to Poughkeepsie. Mr. Snyder dropped those inmates off. He kept the car with him and in the evening then returned with that group of inmates.

Q Just as a point of information, this is a map of Dutchess County, would you describe for the Court, first of all, where Fishkill is and the route that was taken by the inmates to Dutchess Community College?

A Fishkill is down here, right by Beacon, in Beacon. Normally it would go along 52 to 9 and straight up 9 into Poughkeepsie.

Q Where was Dutchess Community College?

A It would be up here in Poughkeepsie. I am not sure of the exact location.

I am sorry. This is Poughkeepsie up here.

It is about 20 miles, I would say.

Q On direct examination you stated that as a result of the January 1974 meeting, Mr. Snyder was placed on probation; is that correct?

A Right, that is correct.

Q In a memorandum dated April 3, 1974 from you to Dr. Agnew, which has been attached to the defendant's motion to dismiss as Exhibit D, you made a statement which I would like

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you to read. This is a statement regarding the meeting of January '74 and the lateness. Why don't you start right about there.

THE COURT: What is the document from which he is reading?

MISS BLOOM: This is defendant's motion to dismiss and it is an attachment, Exhibit D. This is a document that he prepared and submitted to Dr. Agnew regarding the removal of Charles Snyder from the work release program.

THE COURT: Is that one of the documents that was marked in evidence by defendants on Friday?

MR. BIRCH: No, it wasn't, your Honor, but it is part of my affidavit in support of my motion to dismiss submitted to the Court, I believe, in January.

THE COURT: Whose affidavit is it, yours?

MR. BIRCH: Right.

THE COURT: Suppose we have that marked if he is going to read from it.

MISS BLOOM: Fine.

THE COURT: If he is going to read from it it should be in evidence.

I gather there is no objection to this being admitted in evidence?

MR. BIRCH: No, your Honor.

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xx (Plaintiff's Exhibit 3 received in evidence.)

A "A check of the records indicated that this car usually was back later than the required time. This matter was discussed with Snyder and with the other occupants of the car. They were advised that if they continued to return late disciplinary action would be taken. The car continued to return late and on 1/3/74 a request for a furlough was denied, the reason being that the car continued to return late. Eventually other means of transportation were found for the students at this school."

Q This document does not state anything about Mr. Snyder being placed on probation, does it?

A No, it does not.

Q Did the inmate driver system continue after Mr. Snyder was removed as a driver?

A Yes, it did.

Q How long did it continue?

A It continued for a few months after that, then was stopped, and was continued again.

Q What system was used once this system was stopped?

A The officers were driving the men.

Q Were busses used?

A Busses were used. Public transportation as well.

Q Would this lateness be considered a major or minor

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infraction?

A That would be a minor infraction.

Q Was Mr. Snyder notified of the decision in writing?

A I am not sure about that. I don't think so. I don't have a copy of something saying that he received anything in writing on that.

Q On direct examination you stated that you met with Mr. Snyder in February of 1974; is that correct?

A That is correct.

Q What was the subject of that meeting?

A At that time Mr. Snyder had gone to Dutchess Community College on the weekend, I think it is the 8th or 9th of February. On the Saturday he went to a -- he said he was going to a library, the school library, and on the Sunday he said he was going to take part in a Heart fund raising operation at the school.

Q Did Mr. Snyder receive advance notice prior to that meeting regarding the charges placed against him?

A I believe Mr. Holumzer spoke with him on the evening before he saw -- he was going to be seen by the TRC. This would be a verbal thing.

Q Upon what basis do you state that Mr. Holumzer saw Mr. Snyder?

A Mr. Holumzer spoke to me about it.

Q Afterwards?

A After he saw him, yes, I believe so. He did speak to me afterwards, yes.

Q What did Mr. Holumzer tell you that he told Mr. Snyder?

A He said that he had received a telephone call from Mr. Snyder on that Friday asking for permission to go to the Dutchess Community College that weekend, that he had told Mr. Snyder that he could not give that permission, that he would have to speak to his parole officer about it and would have to get approval from the parole officer.

Q On April 1 you sent a letter to Mr. Birch responding to interrogatories that I submitted to him; is that correct?

A Yes.

Q Is this a copy of that letter?

A Yes.

MISS BLOOM: I would like to mark this as Plaintiff's Exhibit No. 4.

xx (Plaintiff's Exhibit 4 marked for identification.)

Q In response to the question, "Please state whether Charles Snyder received oral or written notice of the charges placed against him before he was seen by the Temporary Release Committee," and this is the Committee that met him in February

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1974, would you read your answer, please?

A "The situation that led to Mr. Snyder being seen by the Temporary Release Committee on 2/13/74 was discussed with him by his correction counselor prior to the Temporary Release Committee meeting on 2/13/74. The charges were not discussed as specific charges. What was discussed was the fact that Mr. Snyder had not followed the instruction of the counselor and would be seen by the Temporary Release Committee."

Q What was actually discussed at that meeting in February 1974?

A We asked Mr. Snyder if he had gone to the Dutchess Community College on the weekend and he said that he had. We asked him why he had gone without getting approval from the parole officer and he said -- I am not sure what his exact words were, but basically he did not know that he had to get the approval, and that he was let out of the facility by one of the officers.

Q Did you discuss with him a letter that you had received from the director of the Heart Fund at that time?

A I don't recall discussing a letter. I may have, but I don't recall.

Q How would an inmate leave the Fishkill Correction Facility without permission?

A That is a difficult question. What happened -- can

I expand on this?

THE COURT: That is the question, how is it possible.

A He would have had to have gotten permission from one of the correction officers to go. That is the only way he could leave.

What happened in this case was Mr. Snyder had spoken to the -- after speaking with Mr. Holumzer he spoke with the correction officer who was in charge on the floor and he said that he had to go to school on the weekend. This is fairly common, where men, if they are preparing for examinations, etc., are allowed to go to the college. The officer normally gets something in writing on this.

From what I was able to understand, the officer did not receive anything in writing because nothing was given and was persuaded by Mr. Snyder that, apparently, the parole officer forgot to give him anything, and the choice the officer had was keeping him in and not taking part in the program that he said he was supposed to take part in or letting him go, and the officer let him go.

Q Did you speak to the officer about this?

A I spoke to the officer's supervisor later on about this, yes.

Q You did not speak to the officer about it?

A No. The chain of command is through the supervisor.

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I wouldn't talk to the officer.

Q On direct examination you stated that a letter was sent to Mr. Snyder after this February meeting.

A Yes.

Q Did you deliver this to him?

A No, I did not.

Q Did you have an affidavit of service prepared?

A No.

Q Or design for this letter?

A No, I did not.

Q On direct examination you stated that you notified Mr. Snyder that if he did anything else wrong he would be removed from the program; is that correct?

A Yes.

Q This would have been in February of 1974?

A Right.

Q Did you notify him of this orally or in writing?

A Well, we notified him orally that he would be removed. In writing I think we said something about there would be moreserious action taken. I forget what the exact words were.

xx (Plaintiff's Exhibit 5 marked for identification.)

Q Is this a letter that you allegedly sent to Mr.

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Snyder regarding the disposition of the February Temporary Release Committee?

A That is the letter we sent, yes.

Q Would you read the last paragraph, please?

A Sure.

"Your behavior on 2/9 and 2/10 represents a violation of your program here. As a disciplinary measure the Committee has decided you will be unable to be approved for a furlough for a period of 30 days commencing February 10, 1974. Should this type of activity continue further, more serious disciplinary measures will be taken."

Q You stated on direct examination that you were a member of the Temporary Release Committee that met Mr. Snyder in March of 1974?

A Yes.

Q Did Mr. Snyder receive any advance notice of the charges placed against him?

A I believe his parole officer, when he placed him on hold the previous day, discussed with him that he would be seen and the reason why he would be seen.

Q Upon what do you base that statement?

A The parole officer's statement, my instructions to him and his statement later on.

Q Did you speak to the parole officer after he spoke

with Mr. Snyder?

A Very informally, yes.

Q What did he say?

A Well, basically I would have asked him, "Did you talk to Snyder last night," and he said, "Yes, he knows why he is on hold and he is going to be seeing the Committee."

Q What reason was he given regarding why he would be seen by the Committee?

A Violation of the bounds of confinement.

Q Was Mr. Snyder also questioned regarding smuggling letters at this --

A Yes.

Q Was that charge discussed with him prior to the meeting?

A No, that was not.

Q Was anything else discussed with him at that meeting?

A At the Temporary Release Committee meeting?

Q That is correct.

A I don't believe so. I think those were the only two things we went over.

We did go over his past history in the place.

Q Was he advised that that would be discussed prior to the hearing?

A I don't think so, no.

Q Was Mr. Snyder sent any written notice of the decision?

A Yes.

Q Do you have an affidavit of service verifying that?

A No.

Q Did he sign for that?

A No, he did not.

Q Would violation of the bounds of confinement be considered a major or minor violation?

A That is a major violation.

Q When Mr. Snyder walked into the Temporary Release Committee was he told the purpose of the meeting?

A At the time when he walked in?

Q Yes.

A Yes. When we saw him that day we discussed with him exactly why he was there and what we were going to be discussing.

Q Was he told that as a result of this meeting he could be removed from the program?

A Yes.

Q Did you tell him that?

A Yes.

Q When?

A At the meeting.

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Q When, at the beginning of the meeting?

A When he came in we told him that we were going to be discussing with him his being out of his bounds of confinement, that this was a very serious charge, that it followed on a series of other appearances before the Committee and other discussions with his counselor, and that it could end up with him being kicked out.

THE COURT: It could end up what?

THE WITNESS: With him being removed.

Q Was he advised that if he chose to remain silent, no inferences could be drawn against him?

A No, he could not.

Q What did your first question to him relate to?

A I have no idea.

Q Was Mr. Snyder kept on hold status after this meeting?

A Yes.

Q Was he told anything regarding why he was being kept on hold?

A I believe until he got the notice, which was a few days later, he was just told that he was being kept on hold while the decision was being made by the Committee, and then after that he was notified -- he was notified -- I believe I spoke with Mr. Snyder once on the floor, on the housing unit

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floor, after the meeting, and I did tell him we were recommending that he leave, and I spoke with Mrs. Herman, who is a friend of Mr. Snyder's, for about an hour and a half a few days later and explained exactly what was happening and why, etc.

Q You have stated that Mr. Snyder signed various agreements regarding bounds of confinement, correct?

A Right.

Q Was one condition of that agreement as follows:

"I will conduct myself in a law-abiding manner, will not allow my behavior to become a menace to the safety of any individual or group of individuals"?

A Yes.

Q Did you feel that the fact that Mr. Snyder took an ill individual home constituted a menace to the safety of other individuals?

A No.

Q Did Mr. Snyder ever receive notice that if he exceeded the bounds of confinement on one occasion he would be removed from the program?

A No.

Q On direct examination you stated that Mr. Snyder was removed from the program because his general adjustment to the program was poor; is that correct?

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A That was part of the reason he was removed. The specific reason was his violating the bounds of confinement. But that did enter into it, yes.

Q What aspects of the bounds of confinement agreement were discussed with Mr. Snyder?

A When, at the meeting or in general?

Q When he originally signed the agreement.

A He would have discussed the specific aspects with the parole officer when he began -- well, actually he discussed it on a number of occasions. There was an indication in his record that this was discussed with him by a Mr. Grenis, who is a correction counselor at Greenhaven.

Q This was discussed verbally?

A Right. Mr. Grenis has a report in which he writes down that he did discuss the bounds of confinement with Mr. Snyder. When he came over to our program in August -- I wasn't there in August, but there is an indication that the parole officer had also discussed with him what his bounds of confinement were.

Q Would these bounds include field trips?

A With permission, yes.

Q On direct you stated that Mr. Snyder's adjustment to the program was poor because he was manipulative.

A Yes.

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Q Would you explain that, please?

A Well, I would have to give some instances. Apparently ever since he got there, according to the record --

THE COURT: Got where?

A -- got into the work release program, both at Greenhaven and then later on at Fishkill, Mr. Snyder has seemed to have violated several of the program regulations. There are instances where he bought a hearing aid cord and charged it to his correction counselor, there are instances where he got a subscription to a magazine and charged it -- and denied later on getting that, when it was pointed out that he could not do this. He was seen in a clothing store in the middle of the day, at Montgomery Ward's, I believe it was, in the middle of the day, when he was supposed to be at school. He had gone over to Newburg to buy hearing aid batteries, he said, without getting permission from anyone, apparently, to do this.

These were several instances.

Q In each of these instances would you say these instances were part of the reason why he was finally removed from the program?

A They were instances that indicated to us that he was a very manipulative person, that he would not be following regulations, that he wished to set his own rules.

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Q Could you just answer my question yes or no? Were these instances part of the reason why he was finally removed from the program?

A They were some of the things we looked at. I wouldn't say they were the sole reasons why he was removed. The basic ones would be the February meeting and the March meeting.

Q Regarding any of these instances, was Mr. Snyder given notice that charges had been placed against him?

A Charges were not placed against him in those instances.

Q Was he given a hearing or an opportunity to explain his behavior?

A He discussed it with his correction counselor.

Q But he had no hearing?

A There was not a hearing, no.

Q Would you conclude then that Mr. Snyder was removed from the work release program because of a series of incidents, culminating in the three indicents that were the subject of the January, February, March Temporary Release Committee hearing?

A It was not -- it was part of the decision, it was not the major part of the decision to remove him.

Q Would you agree that in almost all those cases he

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never received advance notice that charges were being placed against him?

A He was not charged with that. He wasn't charged with violation in those instances. These were -- when we looked at his record we saw that several things had been happening. When he did start getting the hearings was in January '74, January, February, March.

Q On direct you indicated that procedures for Temporary Release hearings have changed since Mr. Snyder --

A Yes. They changed twice, as a matter of fact.

MISS BLOOM: Mark this as Plaintiff's Exhibit 6.

xx (Plaintiff's Exhibit 6 marked for identification.)

Q Would you look at this for a minute. Is that an example of the type of notice of charges that inmates now receive at Fishkill?

A Yes. We set this up at Fishkill.

Q You did?

A Yes.

Q Will you just read the name of the document for the record?

A "Notice of Temporary Release Committee Hearing."

Q Why don't you read this paragraph.

A "Your suitability for continued participation in

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the work release program is being questioned. You have been charged with violation of the following work release regulations," and there is a space for it. Continue?

Q Sure.

A "You have been scheduled to meet the Temporary Release Committee for a hearing on these charges on such-and-such a date at such-and-such a time."

There is a place here for the inmate to sign, saying he has received a copy of the charges.

Q What is the lower portion?

A The lower portion is entitled, "Decision and Summary." It is addressed to the particular inmate, gives a written statement as to what the decision of the Committee was, and it is signed by every member of the Committee, and there is a place for the inmate to sign, acknowledging receipt of this.

MR. BIRCH: No objection.

THE COURT: Is that presently in existence, is that it, or was that in existence at the time of this particular charge?

THE WITNESS: Oh, no. That was set up by the Committee at Fishkill to meet some of the problems we were running into.

THE COURT: When?

THE WITNESS: Well, we got final approval to use it

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in, I believe it was, August of '74. This was after Mr. Snyder's case.

xx (Plaintiff's Exhibit 6 received in evidence.)

Q As a coordinator of the Temporary Release Committee at Fishkill -- would that be a correct description of your title?

A It is Chairman.

Q Do you have experience in discipline generally in correction facilities?

A The Temporary Release Committee was set up apart from the Adjustment Committee. There are different standards that we use. I do have some experience with the Adjustment Committee proceedings.

Q How would you describe the differences between the Temporary Release Committee and the Adjustment Committee?

A There is a majority of civilians in the Temporary Release Committee as opposed to the Adjustment, where there is a majority of Corrections staff. There is less of a history in the use of the Temporary Release Committee than there is in the Adjustment Committee. There is not a normal written charge in the Temporary Release Committee, until this particular -- until we started using this format, as there has been in the Adjustment Committee.

Q Is one of the functions of the Temporary Release

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Committee to deal with major offenses, major violations?

A The only function as far as displinary matters that the Temporary Release Committee deals with is matters that are relating to work release programs. The Temporary Release Committee is a committee that makes a recommendation to the superintendent and subsequently to Albany for removal of an inmate from a work release program.

Q Does an Adjustment Committee have the power to remove an inmate from a program?

A It does, but not from the work release program.

Q The Temporary Release Committee does have the power to remove?

A It has the power to make a recommendation. The recommendation goes to the superintendent and from the superintendent to a Deputy Commissioner in Albany.

Q How would a Temporary Release Committee differ from a Superintendent's Proceeding?

A Well, there is no -- thinking of the basic difference, it would be --

Q My question is would a Temporary Release Committee be used for more serious violations as would a Superintendent's Proceeding?

A Be used for serious violations of work release programs, yes.

Q The Temporary Release Committee would have some of the same powers that a Superintendent's Proceeding would have in that it can remove people from programs or recommend removal?

A It just recommends, right.

MISS BLOOM: This is already marked. I think it would be Exhibit 7.

MR. BIRCH: Was that introduced into evidence?

MISS BLOOM: Not yet.

xx (Plaintiff's Exhibit 7 marked for identification.)

Q Would you read the title of this document?

A "Chapter 5, Procedures for Implementing Standards of Inmate Behavior and for Granting Good Behavior Allowances."

Q Is this Chapter 5 of the New York Code of Rules, Correction Code?

A Yes.

Q I am referring now to Part 253, dealing with Superintendent's Proceedings.

MR. BIRCH: I object, your Honor. It is beyond the scope of direct, it is irrelevant, and we don't even know the date of this document. I don't see how it is relevant. The witness testified he was not involved in the Superintendent's hearing.

THE COURT: First of all, what is the date of the document?

MISS BLOOM: The document is dated effective October 19, 1970, this chapter.

MR. BIRCH: Is that the date of the document or the date it was effective?

MISS BLOOM: The document is dated 5/31/73.

THE COURT: You could call the witness as your own witness. I do not believe it was gone into on direct. You can make him your own witness at this time as an adverse party. Proceed.

MR. BIRCH: I object on the ground it is not relevant, your Honor.

THE COURT: It was a rule in existence prior to this case. We will have to see whether it is relevant or not.

Q Would you please read here Section 253.2, "Formal charge and designation of presiding officer." These are generally the procedures that are to be used in a Superintendent's Proceeding, which can result in removal of an inmate from a program.

A "A. Upon directing that a Superintendent's Proceeding be held, the Superintendent shall designate an employee to file a formal charge against the inmate and the Superintendent shall appoint a person to conduct the proceeding.

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"B. The formal charge shall consist of a written specification of the particulars of the incident of behavior involved and the date, time and place of such incident. Where two or more incidents are involved all may be incorporated in a single charge but each must be separately stated. In any case where a report has been made under part 252 of this chapter such report, if it sets forth the above details, may be converted into a formal charge by endorsing such fact thereon. The person appointed to conduct the proceeding should be either the superintendent or a deputy superintendent, but the superintendent may, if sufficient reason exists, designate some other employee to conduct the proceeding. The following persons shall not, however, under any circumstances, be appointed to conduct the proceeding: A person who actually witnessed the incident, a person who was directly involved in the incident, the person who prepared the formal charge. A person shall not be deemed to be ineligible to conduct the proceeding solely by reason of the fact that he served as a member of the Adjustment Committee and reviewed or considered the incident in that capacity."

Q Was a formal charge such as described in Section 253.2 ever provided to Mr. Snyder?

A Not in writing, no.

Q Would you read Section 253.3, which is entitled,

"Notice and Assistance to Inmate."

A "A. The person assigned to conduct the proceeding shall designate an employee to furnish assistance to the inmate.

"B. Such employee shall deliver a copy of the charge to the inmate and shall explain the nature of the proceeding and the charge to the inmate. He also shall ask the inmate whether there is any factual matter that can be presented in his behalf and he shall investigate any reasonable factual claim the inmate may make.

"C. A written report of the action taken and the results of the investigation, if any, by the person designated to furnish assistance to the inmate shall be delivered to the person appointed to conduct the proceeding prior to the commencement of the procedure for determination of the charge."

Q Was this type of assistance provided to Mr. Snyder?

A No.

Q Would you read Section 253.4, "Method of Determination."

A "1. The person appointed to conduct the proceeding shall first advise the inmate that any statements made by him or information obtained from him may not be used over his objection in any criminal proceeding and if he chooses to remain silent no inferences may be drawn against him by virtue

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of his silence."

Q Is this next section simply a written statement that the inmate is given regarding these matters that he is to be advised of?

A Yes.

Q Does Section 253.5 indicate that one of the dispositions that can be made as a result of a Superintendent's Proceeding is, "3. Temporary or permanent change of program"?

A Yes.

Q Would that be similar to removal from a work release program?

A Yes. It could also be done by an Adjustment Committee, I believe, change of program.

Q I am referring now to Section 252.5, which indicates the type of action that an Adjustment Committee can take. Would you look through these three restrictions and see if you find removal from program there.

A I don't see it on that. There may be a later term. But I am pretty sure that the Adjustment Committee could also change the program. There may be a later edition.

Q This is effective --

A This is 9/30/70.

MISS BLOOM: I would like to submit this.

MR. BIRCH: No objection.

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THE COURT: Let it be received.

xx (Plaintiff's Exhibit 7 received in evidence.)

Q Mr. DaSilva, were you aware that Mr. Snyder had hearing problems?

A Yes.

Q Looking at this document, did you ever examine this clinic record for Mr. Snyder?

A No. No, I did not.

MISS BLOOM: I would like to mark this as the next exhibit.

xx (Plaintiff's Exhibit 8 marked for identification.)

Q Would you read the title of this document?

A "State of New York, Department of Correctional Services." Greenhaven is the institution name at the top. "Daily Clinic Record."

Q What is the notation next to Mr. Snyder's name?

A "Physical Classification 2, loss of hearing, both ears."

Q You never saw this document?

A No. This is dated May of '74 -- April of '74.

THE COURT: Keep your voice up, please, so I can hear.

A It is dated April of '74, which is after he had left.

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Q When does this begin?

A It begins before then, in '71.

Q What is the notation at 4/30/74, which would have been immediately after Mr. Snyder returned to Greenhaven from Fishkill?

A "Saw Mr. Kricheff of Belltone Hearing Aid this date. Will call Dr. Frank to discuss problem. Mr. Kricheff will give hearing aid evaluation 5/3/74." Then on 5/3/74, "Saw Mr. Kricheff this date."

MISS BLOOM: I would like to submit this summary.

MR. BIRCH: No objection.

xx (Plaintiff's Exhibit 8 received in evidence.)

MISS BLOOM: That is all.

THE COURT: Any redirect?

MR. BIRCH: Yes. Also on cross first, if I might.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BIRCH:

Q Why did the Temporary Release Committee not follow the regulations in the 7NYCRR for Superintendent's hearings or Adjustment Committee hearings?

A The Temporary Release Committee was set up, as I said, specifically to handle matters relating to work release, at least at that time. There was no specific procedure

detailed as to what the Committee should follow, what rules the Committee should follow. The Committee, however, is the only Committee that could recommend removal from a work release program. It could not be done by Adjustment or at the time by a Superintendent's hearing. That basically is it.

Q Were you aware of the Superintendent Proceeding regulations?

A I would never -- I was not aware of it directly in the sense I have never taken part in a Superintendent's Proceeding. We never did use a Superintendent's Proceeding.

Q Did anyone ever tell you to follow the regulations of a Superintendent's Proceeding?

A No. As a matter of fact, they were supposed to be strictly apart from the Superintendent or the Adjustment Committee hearing. That I was told.

Q You were told that?

A Yes.

Q By whom?

A By Mr. Witt, who is the Director of Community Services.

Q Did he give you any reason why you were not to follow those --

A Yes. There was a fear at the time that if the Correctional staff had direct control over the inmates within

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the program that there may be a higher rate of violation, there may be more people removed.

THE COURT: I do not understand that. What did you say?

THE WITNESS: There was a wish at the time to remove the direct control over the inmates in the work release program from Correctional staff and place it into civilian staff.

THE COURT: Into what staff?

THE WITNESS: Civilian staff.

Q And the reason for that?

A That there was a fear that some of the officers may not be willing to have inmates continue in a work release type program.

MR. BIRCH: On redirect, your Honor, there were a number of documents that I discussed with the witness that were appended to my affidavit and I assume, therefore, that they should not be introduced in evidence, but I would like to introduce them, I would like them part of the record.

THE COURT: All right.

Q I show you this. It is called, "Work Release Proposal Summary."

MR. BIRCH: I would like to mark this first for identification. I guess it is Defendants' C.

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(Defendants' Exhibit C marked for identification.)

Q Will you read the title?

A "Work Release Proposal Summary, Fishkill Correctional Facility." Mr. Snyder's name and number are at the top.

Q Is your signature on this?

A Yes.

MR. BIRCH: I would like to move to introduce this.

MISS BLOOM: Is Mr. DaSilva's signature one --

THE WITNESS: Yes. It is the second from the top.

MISS BLOOM: No objection.

(Defendants' Exhibit C received in evidence.)

MR. BIRCH: I would like to mark this as Defendants' Exhibit D.

(Defendants' Exhibit D marked for identification.)

Q Will you tell the Court what this is?

A It is a report from Mr. Guempel, who is Mr. Snyder's parole officer. It is dated March 26, 1974. It states that he had received a phone call from a Mr. Pfeifer, who is an assistant dean at Dutchess Community, who said he had seen Mr. Snyder in Pleasant Valley being stopped by a State Trooper. The officer contacted the trooper and learned that Mr. Snyder was stopped in Vascar Road going 51.1 miles an hour

in a 30 mile per hour zone and it states when the summons was answerable and where.

Q Who is this addressed to?

A It is addressed to me.

This was the basis for our seeing Mr. Snyder the following day.

THE COURT: When was the summons answerable?

THE WITNESS: I am sorry. They didn't have a date on this. It just said that the summons was answerable in the Town of Pleasant Valley Court, Pleasant Valley, New York, but not a date.

Q Did you have that memo in front of you on March 27, when you met Mr. Snyder?

A Yes, and we read from it to him.

MR. BIRCH: I move to introduce this.

MISS BLOOM: I would object. It is hearsay, in some cases double hearsay.

MR. BIRCH: It is not being introduced to go to the truth of the matter. In fact, plaintiff admitted it. It is going to what this witness had before him.

THE COURT: Yes. Overruled.

xx (Defendants' Exhibit D received in evidence.)

MR. BIRCH: I would like to mark this as Defendants' Exhibit E.

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xx (Defendants' Exhibit E marked for identification.)

Q Will you tell the Court to whom this is addressed and from whom?

A It is addressed to Mr. Snyder from myself. It is dated March 29 and it concerns the result of the Temporary Release Committee.

Q Did you personally give this to Mr. Snyder?

A No.

Q Is it the regular course of business to make out memos like this in cases where inmates have seen the Temporary Release Committee?

A Yes.

Q Or was it?

A Yes.

Q Did you make this one out in the regular course of your business?

A Yes.

Q To whom did you give this?

A Well, I gave it to the secretary, who in turn would have given it to the supervising correction officer, who would then give it to the correction officer on Mr. Snyder's floor, who would give it to him.

Q Does that procedure happen regularly?

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A Yes.

MR. BIRCH: I move to introduce this.

MISS BLOOM: No objection.

xx (Defendants' Exhibit E received in evidence.)

MR. BIRCH: No further questions of this witness, your Honor.

I have one more witness.

THE COURT: All right.

MISS BLOOM: I have one question for recross.

RECROSS EXAMINATION

BY MISS BLOOM:

Q Mr. DaSilva, you stated that the Temporary Release Committee did not follow the regulations for the Superintendent's Proceeding because you were told that you were to follow separate procedures; is that correct?

A Yes.

Q I would like to show you New York State Correction Law, Section 854, regarding conduct of inmates participating in temporary release program. Could you read Section 2, please?

MR. BIRCH: I object, your Honor. The law speaks for itself. The Court can read the law.

THE COURT: It would be helpful to have it read at this time.

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A "If the inmate violates any provision of the program or any rule or regulation promulgated by the Commissioner for conduct of inmates participating in temporary release programs, he shall be subject to disciplinary measures to the same extent as if he violated a rule or regulation of the Commissioner for conduct of inmates within the premises of the institution."

MISS BLOOM: That is all.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. BIRCH:

Q Are you aware whether violations of rules and regulations always result in Superintendent's hearings?

A They don't always, no.

MR. BIRCH: No further questions.

A It meant, the way I understand it, that if an inmate did violate a program rule he would be subject to disciplinary hearings, but not necessarily that the same procedure would be followed.

THE COURT: This exhibit which we received earlier -- I do not know the number -- where you said that the form was adopted in August of '74, after Mr. Snyder's case, which provided for notice to the inmate and the decision rendered by your Committee, is that procedure different from what exists

in the Superintendent's procedural requirements with respect to removal from a program?

THE WITNESS: It is slightly different. There is no provision for someone representing him at a TRC hearing.

THE COURT: TRC?

THE WITNESS: At the Temporary Release Committee hearing. We set that up because we felt that there was a need for a written record to be kept whenever an inmate did see the Temporary Release Committee. There had not been one before. It was set up by Fishkill. I don't know if any other institution has one right now.

THE COURT: Does the Superintendent's procedure provide for cases involving removal from programs?

THE WITNESS: Yes.

THE COURT: All right. Anything further of this witness?

REDIRECT EXAMINATION

BY MR. BIRCH:

Q What kind of programs?

A Usual institutional programs, that is, programs within the institution, a man going to a woodworking shop or taking part in an educational program in the institution, etc.

MR. BIRCH: No further questions.

RECROSS EXAMINATION

BY MISS BLOOM:

Q Would you view the removal of an individual from a work release program as constituting a more serious deprivation of freedom than removal from a woodworking program?

A Yes.

THE COURT: All right. You may come down. Next witness.

(Witness excused.)

R O B E R T W . F I S H E R , called as a witness by the defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BIRCH:

Q What is your present position, Mr. Fisher?

A I am a correction counselor at Fishkill Correctional Facility, Work Release Unit.

Q How long have you held that?

A Since January 1974.

Q What is your prior experience?

A Prior to that I spent five and a half years as a counselor and teacher with juvenile delinquents and PINS, people in need of supervision.

Q What is your educational background?

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A I have a Master's degree in Social Science and in addition to that I have 30 graduate hours toward a Master of Arts degree and speech pathology and audiology.

Q What was your relationship with the plaintiff, Charles Snyder?

A I saw Mr. Snyder on three occasions in Temporary Release Committee hearings.

Q You were on that Committee in January 1974 that met with him?

A Yes, I was.

Q Do you remember what was discussed?

A Yes. We discussed with Mr. Snyder at that time the late return of the vehicle that Mr. Snyder drove to and from his place at Dutchess Community College.

THE COURT: What kind of vehicle was this?

THE WITNESS: This was a state station wagon, a state vehicle station wagon.

Q Was this vehicle set forth with special mirrors for people with hearing problems?

A Not to my knowledge.

Q Was any warning given Mr. Snyder at the end of that meeting?

A At the end of that meeting we told Mr. Snyder that unless the vehicle was returned to the facility on time a

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future furlough would be taken away from Mr. Snyder as well as the other occupants of the vehicle.

Q Were you on the Temporary Release Committee that met with Mr. Snyder in February 1974?

A Yes, I was.

Q What was discussed then?

A At that time we discussed with Mr. Snyder his unauthorized leave from the facility on the preceding weekend.

Q Was any warning given him at that time?

A At the conclusion of that meeting we warned Mr. Snyder that unless his conduct improved that we would seriously consider him for removal from the work release program. In fact, at that meeting we seriously thought of removing Mr. Snyder, but given his explanation, the possibility that what he had to say was accurate, we decided to give him one more chance.

Q Were you on the Committee that met with him in March 1974?

A Yes, I was.

Q What was discussed then?

A At that time two items were discussed with Mr. Snyder. One was we were attempting to determine whether Mr. Snyder was involved in transporting mail from the facility for another inmate to Dutchess Community College. The other item

was a report we had from Mr. Snyder's parole officer indicating that Mr. Snyder had been seen outside of his extended bounds of confinement.

Q Did he admit being out of his bounds of confinement?

A Yes, he did.

Q Did he admit the ticket?

A Yes, he did.

Q Did you permit him time to give an explanation about it?

A Yes, we did.

Q Did he do so?

A Yes, he did.

Q Was he able to hear you, do you think he had any trouble hearing you?

A Based on the responses he gave to my questions, I would say he had no difficulty in hearing. In fact, I asked on two separate occasions during that meeting whether or not Mr. Snyder was able to, one, hear us, and two, understand what we were saying. This was given the fact that he was wearing a hearing aid at the time.

Q And what were his answers?

A To both of these questions he said yes, he was able to hear and was able to understand.

MR. BIRCH: No further questions.

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CROSS EXAMINATION

BY MISS BLOOM:

Q Prior to the hearing on January 1974 was Mr. Snyder given any advance notice of the charges placed against him?

A I do not know that he was given that, not to my knowledge. I don't know whether he received any advance notice or not.

Q You did not give him any advance notice?

A I did not, no.

Q Did you indicate to him when he first walked into the door what charges had been placed against him?

A Yes, we did. You are speaking of the January --

Q January 1974.

A Yes. This was when he sat down, you know, not immediately upon entering the room, but once he sat in front of us we told him what we were discussing.

Q You indicated that Mr. Snyder was given a warning at the end of this meeting that a future furlough would be removed?

A If the car did not return to the facility on time in the future we would take away a furlough privilege from him.

Q How many other inmates were involved in this incident?

A All the others that were in the car. I would guess it probably was seven, including Mr. Snyder, approximately seven inmates, all of which received the same warning.

Q Did Mr. Snyder receive any written notice of the decision?

A Not from me, he did not.

Q In February 1974, the Temporary Release Committee, did Mr. Snyder receive any advance notice of the charges placed against him?

A Not from me

Q Was he given any written decision regarding the decision of the Committee?

A Again, I did not give him any written decision.

Q Did you indicate at the end of that meeting that he would be removed from the program unless his conduct changed?

A Unless it improved, yes.

Q What charges were discussed with him at this February meeting?

A We discussed the fact that he had left, I think it was, the preceding weekend, a Saturday and Sunday, from the facility.

Apparently the information that was brought out at this meeting was that he had requested permission to leave from

his Correction counselor, Mr. Holumzer. Mr. Holumzer indicated to us that he did not give Mr. Snyder permission, that it was the normal function of the parole officer to give the permission for the inmate to leave the facility, and this was by telephone I believe on the Friday preceding the Saturday Mr. Snyder had requested to leave.

Q Where did he go?

A My understanding is he went to Dutchess Community College, according to what he told us.

Q When did he return?

A I do not know. He returned that evening. I don't know what time.

Q Would this be considered a major or minor violation of the work release program?

A In my opinion, it would be considered a major violation.

Q What about Sunday?

A Sunday, again Mr. Snyder left the facility. According to Mr. Snyder at our hearing, he told us he was to participate in a Heart Fund drive, something to do with the Heart Fund Association up at Dutchess Community College.

Q Did he return to the facility after that program?

A Yes, as far as I know he returned that evening.

Q Would this be considered a major or minor violation?

A Again, I would consider it to be a major violation.

Q How can an inmate leave Fishkill Correctional Facility without permission?

A He can leave the work release unit at Fishkill Correctional Facility much more easily than he could leave Fishkill Correctional Facility itself. This is given the fact that Mr. Snyder and the other inmates in the program come and go from the facility on a regular basis, daily basis.

Q How can they leave the facility without permission?

A In this case Mr. Snyder -- again, during the meeting we had it was brought out that Mr. Snyder had indicated to one of the officers that -- actually an officer has to open the gate for Mr. Snyder to leave. He indicated to this officer that he had discussed this with personnel in the work release program and that there should be some type of authorization from his parole officer available to allow him to leave. The Correction officer didn't have that authorization, but given the fact that Mr. Snyder does leave regularly, did allow Mr. Snyder to leave at this time.

Q So the Correction officer permitted him to leave?

A He had to open the door for him to leave, yes.

Q Did Mr. Snyder receive any advance notice of the charges placed against him prior to meeting the Temporary Release Committee in March of 1974?

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A Just speaking for myself again, I did not give him any advance notice.

Q Was he given any written notice of the decision of the group, the Committee?

A Again, I didn't give him written notice. I saw a document that was sent to him. But any written notice, either before or after the Committee, comes from the Committee chairman, not from the members.

MISS BLOOM: I have no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. BIRCH:

Q At the March meeting, after seeing Mr. Snyder, did you discuss the case with the other members of the Temporary Release Committee?

A Yes, we did.

Q What did you discuss?

A After Mr. Snyder had a period before us?

Q Right.

A We discussed whether or not he had violated his extended bounds of confinement and whether or not he should be removed from the work release program. In both cases we agreed that he had violated his extended bounds of confinement, and given the fact that he had received a prior warning, we

thought the next thing was to recommend his removal from the work release program.

MR. BIRCH: No further questions.

THE COURT: All right. Thank you. You may come down.

(Witness excused.)

THE COURT: Have you another witness?

MR. BIRCH: No more witnesses.

THE COURT: Anything further from the plaintiff?

MISS BLOOM: No further witnesses.

THE COURT: This is a hearing on a motion made by the plaintiff for a preliminary injunction, is that so?

MISS BLOOM: That is correct.

THE COURT: It seems to me that we may have heard the entire case here, and unless one of the parties has something additional, the Court would want to consolidate the trial of this matter with this hearing on the preliminary injunction. Is there something further that we ought to hear or have we heard this entire case?

MISS BLOOM: I believe we have heard the entire case.

MR. BIRCH: I agree, your Honor.

THE COURT: Then the Court will, on its own motion, consolidate the trial with the hearing which we have just had on this motion for a preliminary injunction.

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Directing your attention to the order which I entered in this case on January 21, 1975, setting forth the issues to be tried, I would ask each party to take about ten minutes to sum up the evidence with respect to each of those issues.

The plaintiff may proceed and then the defendant and then the plaintiff can have five minutes to rebut.

MISS BLOOM: Regarding the first question, of what the plaintiff was informed the charges against him were, we deal with the hearing of March 1974, we find that the plaintiff was not given any written notice of the charges. There is conflicting testimony regarding whether or not the plaintiff was given oral notice. The plaintiff maintains that he was not. Two Correction officers who testified, I believe Mr. Holumzer and Mr. DaSilva, indicated that another officer, not either one of them, discussed the matter with him, and one of the defendants' witnesses, Mr. Fisher, indicates that he was not aware that the matter was discussed with the plaintiff.

It is clear that if the plaintiff was given any advance notice at all at that point, he was notified that he was charged with exceeding the bounds of confinement. He was not notified that he would be questioned regarding smuggling letters. He was not notified that his entire past disciplinary

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record at Fishkill was in question and would be dealt with at that hearing.

Regarding the two other meetings of the Temporary Release Committee, the plaintiff maintains that he was never informed of what charges were placed against him, and again the testimony of the defendants is conflicting, as to whether or not one officer gave him some notice. It seems clear that he received no notice prior to the January 1974 hearing, and it is also clear that he received no notice prior to any other matters being discussed with him before the January '74 hearing.

The second question, what evidence in support of those charges was adduced at the hearing, at the March '74 hearing, it is clear that the defendant admitted that he had exceeded the bounds of confinement. At the February 1974 hearing the plaintiff denied that he had gone to the library without permission, denied that he had gone to a Heart Fund drive without permission and denied that he had bought batteries without permission.

Regarding the January 1974 meeting, the plaintiff indicated that he had had trouble getting a car back on time. However, he denied that he was responsible for this lateness.

Coming to No. 3, the reasons for which plaintiff was transferred, it appears that plaintiff was transferred

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because of a pattern of conduct, culminating in the finding at the March '74 meeting that he exceeded the bounds of confinement. This is crucial simply because it is clear that he was never given advance notice of these charges prior to being brought before the hearing.

If the plaintiff had been transferred simply for the one violation of exceeding the bounds of confinement, we would have a different case. However, Mr. DaSilva stated on cross examination that he was not transferred because he exceeded the bounds of confinement, he was transferred because of that incident and a series of other incidents, and because these are the reasons for the transfer it was crucial that the plaintiff have advance notice of these charges prior to being brought before the Temporary Release Committee.

Now, it might be said that advance notice is simply a gesture, it is not really important, if he admitted that he did it what difference does it make. However, I believe that due process exists for a reason. Unless an individual is informed of the charges placed against him or her, he certainly has no opportunity to prepare the evidence, prepare a presentation, doesn't have an opportunity to collect any witnesses or collect any evidence, and he or she certainly does not have an opportunity to meet charges and have an opportunity to think through a response prior to a hearing. That is why in these

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cases the advance notice was so crucial.

I would submit that the New York State regulations that I have referred to are simply an example of the standards of due process that should have been present in this case. The Second Circuit in Haymes v. Montayne, which is 505 Fed Supp977, referred to the New York State regulations in examining another transfer situation, and they viewed these regulations not as a standard to be applied in that case necessarily, but as a standard of due process that should certainly be looked at.

I would like to just cite one aspect of this case in discussing what standards of due process should apply in this case. The thrust of the discussion in the Haymes case was simply that if an individual is being transferred, which I think we have established constituted a serious deprivation of liberty in this case, that due process attaches and due process requires certain standards of procedures be followed, that if these same procedures are used within the institution to regulatedisciplinary conduct and disciplinary hearings, which are actually a lesser violation and result in a lesser deprivation, then at least these types of standards should govern a transfer situation which relates in a much more serious deprivation of liberty.

I would just like to cite one sentence from this

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opinion at page 981.

"It would be anomalous indeed both from a due process and an equal protection point of view if the prison authorities could accomplish by transfer a procedure-free punishment which they could not accomplish within their own walls."

I would maintain that for this reason the New York State regulations are at least a guide to be looked at in examining the requirements of due process in this case.

MR. BIRCH: First in terms of notice, informing him of the charges against him, we had testimony from Mr. Holumzer, his Correctional counselor, that he spoke to him once a week either personally or on the phone during this whole period of many months discussing Mr. Snyder's problems with adjustment with the program. We had Mr. DaSilva testify, who is coordinator of the program and in charge of all the employees under him, that he informed the parole officer to, in turn, inform Mr. Snyder of the charges against him. Mr. Fisher did not discuss it. Plaintiff claimed that Mr. Fisher said that it was not discussed. That is not true. Mr. Fisher said that he had no idea, it wasn't part of his job to inform and give notice.

I would also just indicate that both in Sostre and Newkirk and I believe Haymes, there was no question written notice was not specified in those cases as required and oral

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notice was said to be permissible and written notice was not even mentioned until Wolff, which came down several months after this case.

THE COURT: What case is that?

MR. BIRCH: Wolff v. McDonnell does not apply to transfer. It applies to disciplinary hearings.

THE COURT: What Court is that case from?

MR. BIRCH: The United States Supreme Court decided that case last summer, made it not retroactive explicitly and was not explicitly applicable to this situation. Newkirk and Haymes are now in front of the Supreme Court and no decision has come down yet. But I just repeat that in Newkirk, Haymes and Sostre I believe the Second Circuit never said that written notice was required.

In terms of what evidence was in support of these charges, not only did they have evidence in a report from the parole officer, who spoke with the assistant dean at the college, but the plaintiff admitted that he had been there, and I think it is interesting to note that on cross examination, when we were talking about the plaintiff's hearing problems, and I asked him if the car he was driving at this date was equipped with mirrors to compensate for his lack of hearing, and he said it was, that is very singular, because now he is claiming or there are allegations that that was a single

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incident.

Of course, it wasn't at the hearing that -- well, Mr. DaSilva did testify they had had some hearsay reports with no definite evidence that there had been other incidents where the plaintiff had left his bounds of confinement and, therefore, they did not base their final decision on that, but I think it interesting that this car was equipped with special mirrors, indicating that Mr. Snyder was driving that car more than just once.

In terms of the reasons for which he was transferred, there was testimony that the violation of the bounds of confinement agreement was the culminating charge. I believe that there was also testimony from Mr. DaSilva, the head of the program, that was sufficient in and of itself to allow a transfer, and there was testimony from both Mr. Fisher and Mr. DaSilva that they would have transferred plaintiff then, in February, except that they thought that there was some essence or there may be some possibility that his story was correct or that he did not understand the instructions about not leaving the institution. So if not leaving the institution on that one occasion in February was sufficient grounds, certainly violating the bounds of confinement and getting a speeding ticket -- I mean, it wasn't as if he just went out. Here he is speeding along at 50 miles in a 30-mile-an-hour

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zone, which I think indicates some reckless behavior certainly.

I think this was not a hasty decision. We had three professionals testify. They are not Correction officers or parole officers, who have no essential regard for the inmates, but this is their profession, they have training in social welfare and have vast experience in that area, and they decided that this plaintiff was not adjusted sufficiently to this program and their decision was justified. A long report was made up to the head of the institution and I think due process was certainly procedurally followed.

THE COURT: Let me ask you about these rules which were promulgated in 1970. Do you have that exhibit there?

With respect to these rules, which have been admitted as Plaintiff's Exhibit 7, these rules were in effect at the time plaintiff was removed from the program, isn't that so?

MR. BIRCH: That is correct, your Honor.

THE COURT: I believe the portion of this document was read relating to removal of an inmate from a program. What was that section?

MISS BLOOM: I believe it was 253.5. 253.5 I believe gives the dispositions that the Superintendent's Proceeding can give.

THE COURT: I was trying to get to whether these

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rules, which are now in statutory form, I gather, apply to a removal of an inmate from a program within the institution. Is that your claim with respect to these rules?

MISS BLOOM: Yes.

MR. BIRCH: You just stated earlier that they did not apply to this program.

MISS BLOOM: I believe you asked if they applied to the removal of an inmate from a program.

THE COURT: Yes.

MISS BLOOM: That is what he said, yes.

THE COURT: What portion is that?

MISS BLOOM: I believe that is 253.5.

THE COURT: That is headed, "Dispositions." That relates only to what may be done after a hearing or admission?

MISS BLOOM: My understanding of these disciplinary rules is that an Adjustment Committee had limited powers, they cannot remove an individual from a program, a Superintendent's Proceeding can remove an inmate from a program.

THE COURT: I see.

MISS BLOOM: The rules are not set up so that they deal with a certain number of situations. Generally Superintendent's Proceedings deal with major infractions and Adjustment Committees deal with minor infractions.

MR. BIRCH: My understanding, your Honor, is that

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the Superintendent's Proceedings refer to those situations where there is a major loss of good time, either loss of good time or solitary or lengthened segregated housing, and were not meant to take the place of either Adjustment Committee hearings, which are for small infractions, and were not meant to cover the Temporary Release Committee. There has been testimony from Mr. DaSilva that the Superintendent's Proceeding regulations were told by him by a Deputy Commissioner as to not to be applicable to that proceeding.

THE COURT: I do not know how you can reach that conclusion. If I understand this case, as a result of this hearing held in March, the plaintiff here was removed from a work release program, or do I misunderstand this case?

MR. BIRCH: That is correct, your Honor.

THE COURT: A work release program, as I understand the testimony, was a program which an inmate entered one year prior to his prospective release from prison, is that right?

MR. BIRCH: That he was eligible for at one year prior.

THE COURT: He was in it because he was in that category, one year prior to parole, is that it?

MR. BIRCH: Right. But all inmates one year prior to parole are not in that program.

THE COURT: I understand. That is why I am asking

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you. This inmate who is the plaintiff here was in that program, wasn't he?

MR. BIRCH: That is correct.

THE COURT: As a result of this hearing in March he was removed from that program?

MR. BIRCH: Correct.

THE COURT: Which resulted in his being sent to Greenhaven, was it?

MR. BIRCH: That is correct.

THE COURT: Where he was thereafter denied release on parole, is that right?

MR. BIRCH: That is correct.

THE COURT: You say that is not a substantial deprivation of his rights?

MR. BIRCH: I would say that that is a substantial deprivation, but the regulations for Superintendent Proceedings were not intended to cover that.

THE COURT: I thought you said it was intended to cover major things, such as loss of good time or something of this nature, where a man is in a program which is a prelude to his release on parole and he is given the opportunity to learn a skill or something which will help him to get a job when he does get out, he is, in other words, on his way out, and here he is suddenly removed from that program. You think

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that is a minor depriviation?

MR. BIRCH: No, I don't, but I don't think it is as major as loss of good time credit or being placed in solitary confinement, which is what I believe these regulations were intended to cover and are used for by the correctional system.

THE COURT: Let's assume this plaintiff remained in this program. He started in it when, according to the testimony?

MR. BIRCH: Sometime in the middle of 1973.

THE COURT: So we are in the middle now almost of 1975. When would he have been released if he had remained in the program?

MR. BIRCH: That would have depended on the Parole Board's decision. They were not required to release him at any time.

THE COURT: Let's assume he successfully completed the program, went before the Parole Board last April, when he was due to go. Is that right, last April he was due to go before the Parole Board?

MR. BIRCH: I believe so, yes.

THE COURT: Is that right?

MISS BLOOM: He went before the Parole Board in April of '74 and was denied parole and he went before the Parole

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Board again in April of this year and was denied parole.

THE COURT: In other words, if he had completed or stayed in the program he might have been paroled, is that right?

MISS BLOOM: In April of 1974?

MR. BIRCH: He might have, but that is entirely speculative.

THE COURT: I understand that. I am just trying to get at what we are dealing with here, whether this is a major or minor matter.

MR. BIRCH: I would agree that it is more major than many infractions, that it is an important and significant deprivation. There is no disagreement about that, your Honor. I disagree that the Superintendent's Proceedings regulations were intended to apply and I disagree that the Courts ever said anything as rigorous as those regulations should apply. Even in Newkirk, which came down from the Second Circuit two months or three months after this decision, they said it did not require written notice, they did not permit written evidence to be submitted, they did not permit a counsel's substitute. They merely said that there should be some sort of notice, not saying that it should be written, they said that there should be a hearing in front of an impartial tribunal, and that there should be a decision given to the

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inmate.

THE COURT: Let me see if I understand your position, Miss Bloom, with respect to these rules adopted in 1970. Is it your contention or is it not your contention that these rules applied or should have been applied in this case?

MISS BLOOM: I maintain that they should have applied in this case. I would submit that the applicability of those rules to the Temporary Release situation would be governed by 854 of the Correction Law, specifically, Section 2.

THE COURT: Yes, you read something earlier.

Maybe we ought to recess now for lunch. You want to hand up that law you just referred to? We will recess now until 2:15 for lunch.

I will give you this book back. I believe we have it upstairs in chambers. The portion of this Exhibit 7 that you believe applies is Part 253?

MISS BLOOM: It is Section 253, entitled, "Superintendent's Proceedings."

THE COURT: That is all of this exhibit that we are interested in, is that it?

MISS BLOOM: Correct. There is an additional chapter that deals with Adjustment Committees. That is 252. They might be compared to show when major and when minor

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violations are treated differently.

THE COURT: All right.

MR. BIRCH: Your Honor, Mr. DaSilva just indicated that Section 853 of the Correction Law was applicable and gives power to a Temporary Release Committee and sets up its duties.

THE COURT: Power to do what?

MR. BIRCH: Power to remove people from programs of work release.

THE COURT: Is that the same section that you just showed me?

MISS BLOOM: It should be in there, yes.

THE COURT: In Exhibit 7?

MISS BLOOM: No. I am sorry. In the Correction Law.

THE COURT: What section is that?

MISS BLOOM: 854.

MR. BIRCH: Or 853.

THE COURT: Is that different from the section you have brought to my attention?

MISS BLOOM: I brought to your attention 854 and he is referring to 853.

THE COURT: All right.

(Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

THE COURT: I believe before the luncheon recess we were on the question of whether the rules and regulations regarding Superintendent's hearings and Adjustment Committee hearings apply to this situation, and if not, why not. I believe you handed up a statute, Miss Bloom, which indicated these rules and regulations were applicable, and then counsel for defendant pointed out that the Temporary Release Committee had the power to remove individuals from the program by statute, is that right?

MR. BIRCH: Correct.

THE COURT: Let me ask you, Mr. Birch, what significance do you attach to the statutory provision there -- I think it is 253 or 853 -- which says that, "Anyone removed from the program should be afforded the same kind of disciplinary hearing or procedure applicable to Superintendent's hearings, as if they violated a rule of the prison"?

MR. BIRCH: These two sections, 853 and 4, are part of Article 26, which is called, "Temporary Release Programs for State Correctional Institutions." It is about eight sections. 852 says, in part 1, that, "The Commissioner shall promulgate rules and regulations consistent with the provisions of this article for the administration of temporary

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release programs and shall appoint or cause to be appointed a a Temporary Release Committee for each institution," and then it goes on. Part 3 says, "The Commissioner shall designate in the rules and regulations of the department appropriate policies or an appropiate unit of the department to be responsible for, (A)," and then B says, "Supervising inmates during their participation in Temporary Release programs outside the premises of the institutions."

Section 851, which is definitions for the section, sub-section 11 defines the Temporary Release Committee, and that defines their duties as formulating, modifying and revoking Temporary Release Programs at an institution.

My poing, your Honor --

THE COURT: What about the statute Miss Bloom relies on, that provision?

MR. BIRCH: That was 854 sub-2.

THE COURT: Read that.

MR. BIRCH: "If the inmate violates any provision of the program or any rule or regulation promulgated by the Commissioner for conduct of inmates participating in Temporary Release Programs he shall be subject to disciplinary measures to the same extent as if he violated a rule or regulation of the Commissioner for conduct of inmates within the premises of the institution."

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That says, I think, that the consequences of his actions can be the same as if he violated -- if he were in this program and violated other institutional rules, but that doesn't mean that he would -- if he were not in a Temporary Release Program and violated rules and regulations similar to those he is charged with violating in the Temporary Release Program, that does not necessarily mean that he would have a Superintendent's hearing. He could be liable for an Adjustment Committee hearing, or if it were a small infraction --

THE COURT: I thought we earlier agreed this was a major deprivation, being taken out of a work release program. Didn't we conclude that earlier?

MR. BIRCH: Yes, but I don't think --

THE COURT: So we are dealing with a major deprivation. As I understand it, these Superintendent's hearings deal with major deprivations of rights of the inmates, such as being put in solitary or having good time taken away. I would think this would be in the same category, being taken out of a program which is designed to aid your release from prison.

MR. BIRCH: I think though that this statute, this article, the whole article, makes it clear that infractions of inmates in a Temporary Release Program, that those infractions will be dealt with by the Temporary Release Committee and that

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the Department of Corrections has not set up the same exact regulations in the two situations, at least it had not at that time.

THE COURT: You said earlier also that the Temporary Release Committee had the power to remove an inmate from the program, but when you read the statute it seemed to say that they had the power to set up such programs and to remove the program from the institution, not the inmate from the program.

MR. BIRCH: Except if you define "program" under Sub-section 9, Temporary Release Program means various things, including educational leave, and Sub-section 7 -- this is of 851 -- says, "Educational leave means a privilege granted to an eligible inmate to leave the premises of an institution for a period not exceeding 14 hours in any day for the purpose of education or vocational training or for any matter necessary to the furtherance of any such purposes."

Therefore, if you read those definitions together under 851, I think it is clear that the Temporary Release Committee has this power to revoke individual educational leave.

THE COURT: Let's assume for the moment that the Committee does have that power. You say they could revoke the privilege from an inmate without giving him the kind of hearing referred to in 854.1, is it, that you just read, that Miss

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Bloom relies on?

MR. BIRCH: It was 854.2, I believe. That says that the punishment shall be the same, not that the procedures for determining what the punishment shall be shall be the same. It says, "He shall be subject to disciplinary measures to the same extent as if he violated a rule or regulation of the Commissioner."

I don't know. I believe that that means that the resulting punishment can be the same but does not make the Committee subject to the same exact procedures.

THE COURT: In any event, we now have a procedure applicable to inmates released from the Temporary Release Program, is that it?

MR. BIRCH: Correct, your Honor.

THE COURT: How does that differ from a Superintendent's Procedure for, say, withdrawing good time?

What exhibit is that again? Suppose we get that exhibit.

MR. BIRCH: Plaintiff's Exhibit 7, I think.

THE COURT: There was another one that shows the most recent rules adopted by the Temporary Release Committee applicable to hearings resulting in removal from a program. Isn't that so?

MR. BIRCH: Correct.

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THE COURT: What exhibit is that?

MR. BIRCH: 6.

THE COURT: How does that differ?

MR. BIRCH: This is just one form for informing him of the charges, which is, I assume, somewhat similar --

THE COURT: I thought there was a place on there also for recording the decision. Is there?

MISS BLOOM: Yes, there is.

MR. BIRCH: I assume it is.

THE COURT: Look at it.

MR. BIRCH: In those regards it is similar, yes. In terms of given written notice of the charges --

THE COURT: Written notice?

MR. BIRCH: Yes. This provides for written notice of the charges.

THE COURT: That says the institution now recognizes, doesn't it, that it is a major violation?

MR. BIRCH: It says, "Your suitability for continued participation in the work release program is being questioned."

THE COURT: Written notice must be given?

MR. BIRCH: Then it says, "You have been charged with violation of the following work release regulations."

THE COURT: In other words, the inmate is now given written notice of any violation, isn't that so?

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MR. BIRCH: That is correct.

THE COURT: Which may result in his removal from the program?

MR. BIRCH: Yes.

THE COURT: Doesn't that say the institution now recognizes this as a major violation, the same as would require a Superintendent's hearing?

MR. BIRCH: Yes, I agree, that is correct.

THE COURT: So that with respect to any future injunction, that is not necessary, that has already been adopted, is that so?

MR. BIRCH: That is correct.

THE COURT: The relief sought here, is that right, Miss Bloom?

MISS BLOOM: With regard to the written charges, yes.

THE COURT: Does it provide for other things on that paper? I thought it did. How about notice of decision?

MISS BLOOM: And notice of decision.

THE COURT: What else is there in this case that isn't on that paper?

What is the number of that exhibit?

MR. BIRCH: Plaintiff's Exhibit 6.

THE COURT: What else is there that you seek in this action that is not already provided for by that most recent

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regulation?

MISS BLOOM: This contains the major types of due process guarantees that are required. The opportunity to present evidence would be one other, and the second additional requirement would be counsel or assistance of some representative.

THE COURT: The opportunity to present evidence?

MISS BLOOM: To present evidence.

THE COURT: That is not included there?

MISS BLOOM: No.

THE COURT: What is included? Written notice of the charge, provision for a hearing?

MISS BLOOM: Provision for a hearing, it notifies the inmate of the date of the hearing and the time of the hearing, and there is a written notice of the decision.

THE COURT: Hearing means opportunity to present evidence, doesn't it, to be heard, doesn't it?

MISS BLOOM: I would assume so.

THE COURT: The only thing lacking is the right to have some kind of assistance at that hearing?

MISS BLOOM: Correct.

THE COURT: Which is provided for in the Superintendent's rules?

MISS BLOOM: That is correct.

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THE COURT: What do the Superintendent's rules say about that?

MR. BIRCH: Your Honor, if I may --

THE COURT: Just a minute.

MISS BLOOM: The Superintendent's Proceedings state at 253.3, "The person appointed to conduct the proceeding shall designate an employee to furnish assistance to the inmate. That individual will ask the inmate whether there is any factual matter that can be presented in his behalf and he shall investigate any reasonable factual claim the inmate may have."

THE COURT: So that would be the only difference, is that it?

MISS BLOOM: That is correct.

THE COURT: Between what they now have adopted and what the Superintendent's hearing would provide?

MISS BLOOM: There is one other difference. 253.4 states that, "The person appointed to conduct this proceeding shall first advise the inmate of two things, orally and then in writing, first, that any statement made by him or information obtained from him may not be used over his objection in any criminal proceeding, and 2, if he chooses to remain silent no inference may be drawn against him by virtue of his silence." Otherwise I would state that the procedures are

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basically the same.

MR. BIRCH: Your Honor, I would just say that at lunch I was informed by Mr. DaSilva that there is an open question now in the Department as to whether Superintendent Proceedings or Temporary Release Proceedings will be used in the future in similar situations to that presented here.

THE COURT: What similar situations?

MR. BIRCH: Removal from work release programs.

THE COURT: I do not know what you are saying.

MR. BIRCH: There is a dispute apparently within the Department as to which procedures will be used in the future to remove inmates from work release programs, as to whether it will be the Temporary Release Committee procedures or the Superintendent Proceeding.

THE COURT: You mean whether it will be Exhibit 6 or 7?

MR. BIRCH: Correct.

THE COURT: What do you mean, that we may end up with these additional protections included?

MR. BIRCH: We may. I am not in any position to commit the Department.

THE COURT: Going back then to the first matter which was to be tried here according to the order of January 21, 1975, it is not disputed, is it, that the plaintiff was

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not informed of the charges against him in March, when he was removed from the program, is that it? What was the date in March?

MR. BIRCH: The date of the hearing was the 27th. It is disputed.

THE COURT: As to whether he was notified?

MR. BIRCH: Yes. Mr. DaSilva, the head of the program, testified that he charged the parole officer to notify Mr. Snyder of the charges against him and that it was his position and Mr. DaSilva's position to tell this to the parole officer and that it was within the parole officer's duty to do so.

THE COURT: Did the parole officer testify?

MR. BIRCH: No, he did not.

THE COURT: It is undisputed then that he got written notice, is that so?

MR. BIRCH: Of the decision?

THE COURT: Yes.

MR. BIRCH: Correct.

THE COURT: That is not disputed. He did not get written notice, is that right?

MR. BIRCH: That is correct.

THE COURT: It is therefore disputed that he got oral notice. As I remember the plaintiff's testimony, he did

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not get any notice. Is that it?

MR. BIRCH: Correct.

THE COURT: That he was simply told to wait and then he was taken into some room where these three people were sitting, is that his testimony?

MISS BLOOM: That is correct.

THE COURT: Going on to 2, what evidence in support of those charges or other charges was adduced at the hearing, the testimony as I understood it was that he was removed from the program for being out of the bounds, for one thing, and having had previous violations, about which he had been warned, and his general overall conduct in the program. Is that the testimony, Mr. Birch?

MR. BIRCH: Correct, your Honor.

THE COURT: Is it your claim that he had notice orally of all those three things?

MR. BIRCH: It is my claim that he had notice that he had violated the out-of-bounds agreement -- this was at the March meeting -- that he had been warned on earlier occasions of this other violation, and that his general attitude and maladjustment to the program was discussed with him by previous committees and by his Correction counselor on many occasions.

THE COURT: The question now is whether it is your

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claim that he had oral notice as to these other grounds which resulted in his removal, or did he have only notice of being out of bounds?

MR. BIRCH: At the March meeting he had apparently notice only of being out of bounds.

THE COURT: All right. Moving on to 3, the reasons for which plaintiff was transferred, we now find he was transferred for at least three reasons, is that it, being out of bounds, previous violations and his general overall maladjustment to the program, is that it?

MR. BIRCH: That is correct, your Honor. We had testimony that being in violation of the out of bounds was sufficient in and of itself for removal.

THE COURT: Yes.

To sum up now, what the Court would like the parties to do is to submit by next Monday a brief discussing these three issues and discussing the following questions.

1. Whether the rules and regulations promulgated in 1970 and admitted here in evidence as Plaintiff's Exhibit 7 were applicable to the March 27, 1974 hearing which resulted in plaintiff's removal from the program.

If those rules were not applicable, what minimum procedural due process should have been afforded?

The next question is, were those minimal due process

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procedures granted here.

Finally, whether in view of the newly adopted rules, which is Plaintiff's Exhibit 6, there is need for an injunction here with respect to future violations of due process or whether those present rules and regulations meet all of the required due process standards for a violation of this type.

All right. That is due next Monday. Since this has been a very short proceeding -- do you represent Mr. Snyder as an attorney for a legal services organization?

MISS BLOOM: Yes, I do.

THE COURT: The Court is going to require a transcript of the proceedings here with respect to the testimony. I believe it will be very short. The testimony could not have consumed more than two days.

Thank you.

MR. BIRCH: Your Honor, Monday is a holiday.

THE COURT: All right. We will make it Wednesday then.

MR. BIRCH: Thank you very much, your Honor.

MISS BLOOM: One more question. I would just request that the writ be signed so that Mr. Snyder can return to Greenhaven as soon as possible.

THE COURT: Certainly.

- - - - -

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Charles Dyson Snyder	3	31	54	
Albert C. Holumzer	72	80		
Anthony DaSilva	87	106	141 148	147 150
Robert W. Fisher	150	154	158	

EXHIBIT INDEX

Defendants	Identification	In Evidence
A		31
B		32
C	144	
D	144	145
E	146	147

Plaintiff		
2		113
3		117
4	119	
5	122	
6	131	133
7	135	140
8	140	141

PLAINTIFF'S EXHIBIT "1"

"EW" YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

Green Haven Correctional Facility

DATE 11/6/74

CHAIRMAN, TEMPORARY RELEASE COMMITTEE

I, CHAS. SNYDER 14131 CELL C334

SUBJECT: FURLOUGH [X] LEAVE OF ABSENCE [ ]

Dates of Last Furlough or Leave of Absence 5/74

I hereby apply for a period of 7 days for the purpose of VISITING WITH MOTHER & NURSING HOME-HER CONDITION PERSISTS

This furlough or leave is to begin on DEC 21ST, and (date)

terminate on DEC 29th /74.
(date)

If this request is granted, my address while on leave will be 53 W 29 st STREET NYC 212 889-1409
(address and phone number and Apt.#)

which is the home of SON-IN-LAW & DAUGHTER
(name and relationship)

I am certain that I will be welcome at my leave aidress.
I understand that all travel and living expenses incurred in connection with this leave will be borne by me.
If this request is grantd it will not cause any undue financial hardship to my family.
I agree to abide by the leave regulations of the Department of Correctional Services which will be explained to me before I depart on leave.

Chas Snyder
Inmate's signature 14131

FOR OFFICIAL USE ONLY DATE 1-13-74

[ ] APPROVED [X] DISAPPROVED

REASON: FAILED TO ADJUST IN EDUCATIONAL RELEASE PROGRAM POOR RISK

Chairman, Temporary Release Committee

TYP- 1

Plaintiff's Exhibit "2"

...as Affirmed and Modified by the Second Circuit June 3, 1974 (NB: The portion of 3a) requiring prior notice of the rules of the institution was affirmed.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

JAMES NEWKIRK and CORNELIUS LUCAS, :

Plaintiffs, :

-against- :

HAROLD N. BUTLER, Superintendent of Wallkill Correctional Facility, and PETER PREISER, Commissioner of Correctional Services, : FINAL JUDGMENT

'72 Civ. 2851 R.J.W.

Defendants. :

----------X

This cause came on to be heard on November 27, 28 and 29, 1972, and was argued by counsel, and thereupon, upon consideration thereof, the court having rendered and filed an opinion and made and filed findings of fact and conclusions of law, all dated October 9, 1973, it is hereby

ORDERED, ADJUDGED and DECREED that the action is dismissed as to plaintiff Lucas and that defendants' transfer of plaintiff Newkirk from Wallkill Correctional Facility (hereinafter "wallkill"), a medium security prison, to a maximum security prison on June 8, 1972 violated plaintiff's rights under the Constitution and laws of the United States, in that:

1) plaintiff Newkirk's interest in continuing to be situated at Wallkill is sufficiently great that transfers in direct response to his activity deserves some sort of "due" process, ~~at the very least the knowledge that it is a possibility~~;

2) transfer from Wallkill to maximum security institutions is used by the defendants for disciplinary purposes;

3) plaintiff Newkirk could not be transferred without being afforded due process, including

a) prior notice of the rules of the institution ~~and what acts on his part would lead to his being transferred~~;

b) a hearing at which he was informed of the charges against him and afforded an opportunity to explain his behavior before a relatively impartial tribunal either prior to the transfer or if prompt action is essential, as soon thereafter as practicable;

4) the situation at Wallkill on June 8, 1972 did not represent so clear and present a danger to the security of the prison as to justify transferring plaintiff Newkirk without warning; and

5) plaintiff Newkirk is entitled to

a) have no adverse action taken against him whether with reference to parole or discipline, based on the fact of his transfer on June 8, 1972; and

~~b) know the scope of permissible behavior at Wallkill and the circumstances which in defendants' judgment would warrant his transfer to another prison.~~

Dated: New York, New York
October 26, 1973

/s/ Robert J. Ward
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED OCTOBER 29, 1973
of Raymond F. Burghardt
Clerk

Plaintiff's Exhibit 3

Dr. Agnew, M.D., Director

Mr. Anthony DaSilva, Work Release Program Director

REMOVAL FROM PROGRAM - CHARLES SNYDER WR26

April 3, 1974

Charles Snyder is a 48 year old male who was accepted into the Work Release Program, at Green Haven Correctional Facility, on 6/20/73. Snyder was transferred to the Work Release Program at the Fishkill Correctional Facility on 8/31/73. During the entire period he was in the Work Release Program, Snyder was enrolled as a student at the Dutchess Community College with a major in Nursing.

His adjustment during this program has been marginal at best. There are several disciplinary reports against this inmate. The latest report was received on 3/26/74. On that date the parole officer had received a telephone call from the Assistant Dean of Education at Dutchess Community College, Mr. Gary Pfeifer. Mr. Pfeifer stated that he had seen Mr. Snyder in Pleasant Valley stopped by a State Trooper.

Contact with the State Police revealed that at approximately 9:00 AM on March 22, 1974 Snyder was stopped by Trooper Jorgenson on Vascard Road. At that time Mr. Snyder was traveling at 51.1 miles per hour in a 30 mile per hour zone.

This inmate was interviewed by the Temporary Release Committee on 3/27/74. At that time he admitted that he been driving an automobile belonging to Mrs. Shirley Herman, a student at Dutchess Community College. He stated that he had known Mrs. Herman for several months, she was also enrolled in the Nursing Program. He advised that on this date he had been asked by Mrs. Herman to drive her home as she was not feeling well. He stated that he had met Mrs. Herman, in the cafeteria of Dutchess Community College, on the morning of 3/22/74 at approximately 8:15 AM. He stated that he did drive her home.

Information also revealed that while Snyder was a driver of the car, Mrs. Herman was an occupant xx as was two of Mrs. Herman's children. This was discussed with him. He stated that Mrs. Herman

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had apparently felt somewhat better and had then picked up some material from home and was then returning to the college. When asked as to the presence of the children in the automobile, he stated that the children were going to be staying with her in class. These children are approximately 10 years of age.

Mr. Snyder admitted, after questioning, that ~~x~~ he was aware that going to Mrs. Herman's house anddriving her automobile constituted a violation of the bounds of confinement agreement. He advised that he realized that this was a serious matter but he felt that the reasons, Mrs. Herman's illness, provided him with a humanitarian excuse. Mr. Snyder was also asked if he had ever been to Pleasant Valley before. After some initial hedging on this question he admitted that he had. He was aware of the fact that going to this area, which was outside of his accepted bounds of confinement, was a serious violation of Work Release regulations.

It should be noted that this is not an isolated incident. Mr. Snyder has been making marginal adjustment in this program since June 1973. On July 5, 1973 Snyder, without approval, went to a hearing aid center in Poughkeepsie, obtained a hearing aid cord from same and then had the item charged to Correctional Counselor Higgins. ~~Xx~~ A bill from the hearing aid company, to Correction Counselor Higgins, was received by Mr. Higgins. At that time Snyder was a inmate at the Green Haven Facility. On July 31, 1973 Snyder and another inmate went, without permission, to Vassarr Bros. Hospital in Poughkeepsie for an interview for part-time employment. They did not inform the personnel department at Vassar Brother Hospital their Work Release status. However after this interview they then contacted the Parole Office in Poughkeepsie and advised the parole staff there.

Approximately one month later Snyder went out on a Saturday morning, without permission, allegedly for the purpose of keeping a medical appointment. This trip had been done without permission. He was apparently able to convince the Correction Officer on duty that he had a valid appointment and permission for same.

In a memo dated 11/8/73 Mr. Higgins advised inmate Snyder that he had received a bill for a magazine. It was pointed out that Mr. Snyder had no authorization for the purchase of this magazine and there was no reason why the bill should have been sent to the facility.

On January 1974 Snyder was seen by a Temporary Release Committee at this facility. He had been assigned as an inmate driver and was responsible for driving inmates to and from the

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school in Poughkeepsie. This had been made since shortly after his arrival at this facility. A check of records indicated that this car usely was back later than the required time. This matter was discussed with Snyder and with the other occupants of the car. They were advised that if they continued to return late that disciplinary action would be taken.

The car continued to return late and on 1/3/74 a request for a furlough was denied. The reason being that the car continued to return late. Eventually other means of transportation were found for the students at this school.

On 2/8/74 Snyder had contacted Correction Counselor Holumzer regarding going to the library at Dutchess Community College on 2/9/74. At that time Mr. Holumzer stated that he did not have permission to go to the library but could obtain this permission from his parole officer. On 2/9/74 Snyder left the facility for Dutchess Community College library without obtaining permission from his parole officer.

On 2/10/74 Snyder again left the facility. This time to take part in ~~the~~ a community program. No permission had been granted for this activity. Snyder again lost a furlough for a period of 30 days for this behavior.

On this occasion Snyder was warned that any further violation of the Work Release regulations would probably result in his being removed from the program. As explained the report was received stating that Snyder had been out of his bounds of confinement. He has admitted same.

What has made this a most difficult situation is that this inmate, ~~he~~ at a relatively advanced age, has been accepted into and is taking part in a college program. While his marks are not spectacular he has been passing his courses. (He did fail one course in Nursing). However this is an extremely manipulative kind of individual. He has broken the rules and regulations on numerous instances. Despite specific instructions Snyder has continued to act in his own way without regard for program regulations or the needs of others. In spite of repeated warnings and continous counseling not only from the members of this staff but also from the staff at Dutchess Community College. Snyder has continued to violate the Work Release regulations.

The committee in its meeting on 3/27/74 agreed that this inmate should not remain in the Work Release Program. The recommendation of ~~this~~ the committee is that this man be removed from the program.

ONLY COPY AVAILABLE

MR. A. DaSILVA
Work Release Program Director

AD/vab

cc: Mr. Witt, Director of Community Services
Commissioner Baker
Mr. Atkinson, Assistant Director of Community Services
✓Mr. Kennedy, Institutional Parole

Plaintiff's Exhibit 4

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

FISHKILL CORRECTIONAL FACILITY AND MATTEAWAN STATE HOSPITAL

BOX 307 BEACON, NEW YORK 12508

VITO M. TERNULLO
Superintendent

RECEIVED
APR 4 1975
LAW
NEW YORK CITY OFFICE

April 1, 1975

Mr. David L. Birch
Deputy Assistant Attorney General
N.Y.S. Department of Law
Two World Trade Center
New York, N.Y. 10047

Re: Charles Snyder WR26

Dear Mr. Birch:

This letter is in response to the interogatories submitted in the case of Charles Snyder vs. Peter Preiser, et al.

Listed below are the answers to the interogatories #1 thru 17.

Interogatory #1. Yes. All Work Release participants received copies of Administrative Bulletin #12, Amended (6/22/72) and Administrative Bulletin #63 (6/22/72). These bulletins provide information on the criteria for the various Temporary Release Programs including the Work Release Program. Material was also distributed, during the period of time mentioned that advised all Work Release participants that they were subject to the normal rules and regulations of the facility, and in addition, were under the supervision of a parole officer. Specific written information was also provided regarding their expected behavior within the community, the disposition of their earnings, shopping regulations and periodic blood or urine tests.

Each participant also signed a Work Release Program Agreement and a Bounds of Confinement Agreement. As the specific bounds of confinement for each inmate varied, verbal instructions regarding those bounds of confinement were given to each inmate by their parole officer. The bounds of confinement agreement listed

the name of the place where the program participant was employed or attended school. The bounds of confinement agreement also stated "(The participant) is permitted to eat his meals in approved eating places and shop in various stores in the area while going to and from work. His route of travel between Fishkill Correctional Facility and his place of employment shall be the most direct route on primary state roads wherever possible". The specific roads to be used and the specific area in which each participant was to eat his meals and shop were given verbally to the inmate by his parole officer.

Interogatory #2. There was no written notice of all the various types of behavior that could constitute infractions of the Work Release or Study Release Program. There was a written notice, in the Work Release Program Agreement, that failure to comply with the instructions of the parole officer or of any other employee of the department could lead to disciplinary action.

Interogatory #3. No.

Interogatory #4. Yes. The members of the Temporary Release Committee that saw Charles Snyder in January 1974 were Mr. Anthony DaSilva, Mr. Robert Fisher and Mr. Kenneth Guempel.

Interogatory #5. Mr. Snyder had been counselled on several occasions, by various members of the Work Release staff regarding his late return to the facility from his approved program. He was advised by both his parole officer and counselor that if he continued to return late to the facility he would be seen by the Temporary Release Committee to determine if any disciplinary action should be taken. He was not notified immediately prior to the hearing of the charges. The charge against Mr. Snyder at the particular hearing was that he was frequently late in returning from his school program. This charge was discussed with him, verbally, at the time of the committee hearing.

Interogatory #6. See answer to Interogatory #5.

Interogatory #7. Yes. The members of the Temporary Release Committee who saw Mr. Snyder in February 1974 were Mr. Anthony DaSilva, Mr. Robert Fisher and Mr. James McCaffrey.

Interogatory #8. The situation that led to Mr. Snyder being seen by the Temporary Release Committee on 2/13/74 was discussed with him, by his correction counselor, prior to the Temporary Release Committee meeting on 2/13/74. The charges were not discussed as specific charges. What was discussed was the fact that Mr. Snyder had not followed the instruction of the counselor and would be seen by the Temporary Release Committee.

Interogatory #9. Mr. Albert Holumzer, Correction Counslor, This interview with Mr. Snyder took place on Tuesday, 2/12/74.

Interogatory #10. Mr. Snyder was used as an inmate driver for the Work Release Program from October 1973 to January 1974.

Interogatory #11. There were several inmates who were utilized as inmate drivers both before and after Mr. Snyder. The length of time each served as a driver varied.

Interogatory #12. The inmate driver system for Work Release at Fishkill Correctional Facility has not been discontinued.

Interogatory #13. Yes. Mr. Snyder was charged with violating the bounds of his confinement on 3/22/74.

Interogatory #14. The charges against Mr. Snyder were discussed with him, verbally, on 3/27/74 by his parole officer, Mr. Kenneth Guempel.

Interogatory #15. All inmates participating in a Work Release or Study Release Program are required to travel to the location of that program by the most direct route possible. They are also permitted to eat at restaurants and shop in various community stores in specific locations. The route travelled to the program location and the area in which they are permitted to shop constitute the bounds of confinement for the Work Release participant. The specific bounds for each inmate vary, and is discussed, verbally, with the inmate by his parole officer.

Interogatory #16. From January 1, 1974 to March 31, 1975 17 individuals have been removed from the Work Release Program at Fishkill for exceeding the bounds of their confinement. Violation of the bounds of confinement

agreement is usually accompanied by violation of one or more of the other Work Release regulations. There have also been a number of individuals who had been seen on several occasions for other disciplinary infractions and who were advised that any further violation could result in their removal from the program. In some of these cases these individuals violated the bounds of their confinement agreement but no other work release regulation at that particular time. These individuals however were removed as their adjustment to the program was poor.

Interogatory #17. The chronological and program reports submitted by correction counselors and parole officers note the various programs in which Mr. Snyder participated. These reports also indicated his adjustment and behavior while in the program. The medical records regarding Mr. Snyder are kept in a seperate medical file and are the responsibility of the medical personnel at the Fishkill Facility.

Yours truly,

Mr. V. Ternullo
Superintendent

BY _____
Program Coordinator
Work Release

AD/vab

cc: Mr. Ternullo, Superintendent
Mr. L. Witt, Director of Community Services

P.O. Dwenger Plaintiff's Exhibit "5"

ONLY COPY AVAILABLE

Charles Snyder WR 26

Temporary Release Committee, Work Release

Disciplinary Action

Feb. 15, 1974

On 2-13-74, you were seen by the Temporary Release Committee regarding your failure to comply with specific instructions of Correction Counselor Albert Holmzer. On 2-8-74, you had contacted Mr. Holmzer regarding going to the library at the Dutchess Community College. At that time, Mr. Holmzer stated that you did not have permission to go to the library but could contact your Parole Officer at a subsequent date to obtain this permission. On 2-9-74, you left this facility for Dutchess Community College.

On 2-10-74, you again left this facility ostensibly to take part in a community program. No permission had been granted for this activity.

Your behavior on 2-9 and 2-10-74 represents a violation of your program here. As a disciplinary measure, the Committee has decided that you will be unable to be approved for a furlough for a period of 30 days commencing Feb. 10, 1974. Should this type of activity continue further, more serious disciplinary measures will be taken.

A. De Silva
Chairman, Temporary Release Committee

AD:cmd

Plaintiff's Exhibit 6

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FISHKILL CORRECTIONAL FACILITY

Work Release Program
Box 307
Beacon NY 12508

NOTICE OF TEMPORARY RELEASE COMMITTEE HEARING

TO: _____ _____
Name Number

Your suitability for continued participation in the Work Release Program is being questioned. You have been charged with violation of the following Work Release regulations: _____

_____

_____

_____

_____

_____

_____

_____

_____

You have been scheduled to meet the Temporary Release Committee for a hearing on these charges on _____ at _____.
Date Time

I acknowledge receipt of a copy of these charges on _____.
Date

_____
Signature

DECISION AND SUMMARY

TO: _____ _____
Name Number

_____

_____

_____

_____ _____
Chairman, Temporary Release Committee Date

_____ _____
Member, Temporary Release Committee Date

_____ _____
Member, Temporary Release Committee Date

I acknowledge receipt of a copy of the decision and summary on _____.
Date

_____
Signature

Form WR 4 (9/74)

7 N.Y.C.R.R. Chapter 5 Part 253

effective October 1970

(document dated May 31, 1973)

not included in Record

Plaintiff's Exhibit 8

RECEIVED
BY MAIL
MAR 28 1975
DEPARTMENT OF LAW
NEW YORK CITY OFFICE

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
GREEN HAVEN CORRECTIONAL FACILITY
STORMVILLE, N.Y. 12582
914-226-2711

LEON J. VINCENT
Superintendent

March 25, 1975

Walter Fogg
Deputy Supt.
Security

Wilson S. Deane
Deputy Supt.
Admin. Services

Carl J. Berry
Deputy Supt.
Program Services

Mr. David Birch
Office of the Attorney General
NYS Department of Law
Litigation Bureau
Two World Trade Center
New York, New York 10047

RE: SNYDER, Charles
GH# 14131

Dear Sir:

Enclosed is the information you requested on the above subject while he was at the Fishkill Correctional Facility. You asked for disciplinary, educational and medical records, but there was nothing in his school record while he was at Fishkill.

Very truly yours,

WALTER FOGG
ACTING SUPERINTENDENT

by: R. L. Middlebrook
Richard L. Middlebrook
Head Clerk

RLM:am
Att.

0248

TQ

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

M.H.C.F.

(NAME OF INSTITUTION)

DAILY CLINIC RECORD

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NO. 14131 NAME Snyder charles

PHYSICAL CLASSIFICATION II / loss of hearing WASSERMANN TEST Neg - 4-19-74

DATE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
5/74	Rec'd. Fishkill W.R.	10/12	Com'l Lun vegetables
-30-74	Saw Mr. Kricheff of Beltone Hearing		Sat pan fried fish
1-74	Aid this date. Will call Dr. Frank		Fro Choc - ave yogurt
-2-74	to discuss problem. Mr. Kricheff will give hearing aid		
-3-74	evaluation 5-3-74. Saw Mr. Kricheff this date.		
10-74	B/P 130/96 P 100 c/o chest pain - dyspnea	1-6-13	Complains of
	def. appears to have some trouble breathing		st. Lymphadenopathy
	dyspnea - B/P rechecked - is now later		Left last ...
	described burning sensation in upper 89		...
	inflation - def. sent to be admitted		...
	only wanted vital signs checked will		...
	return to Blk & come back if no improvement		...
	as said in A.M. on S.C. 65		the table.
11/74	Go to Pt. w/ Chest pain Mrs. 4-5 mo's		B.F. Tenderness
	Burning sensation		pressure at 7028 NB
	Usually late Lesion heal		but no pain elsewhere
	2 Keflex bid. (R) hip.		on deep breathing?
	WBC		Fracture
	ATC Yellow - NORM - Results		Evening Pt. left a tapped
	17 Intra Clavicular Sub Cutaneous		lesion thoracic - pt to Dr. Saunders
	Pleur. Pain		on Darvon q. 6 5 mgm. t.i.d. x 3
	Sores 10 cm Body #6	10-17-74	+ Pt. Patient Feels that
			Beltone will not suffice - Needs
7/12/74	PR: Prostate Negative		different instrument.
	Enlarged Indurated		To see Beltone man
	Fu. Review Months		To monitor
	Top. & Resection Home		Had fitting at Newburgh
		0249	Hearing Center provided by
			Fishkill C.F. by Worcester

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DATE	REMARKS & TREATMENT
	& Rx was made Dec 25, 1973
	Sent over for fitting.
	This transferred here 4/5/74
	Hearing Center of Orange County
	182 Broadway Newburgh
	Tel 561-4567 Gustave
	Toole
	Todd Bell Toneman
	18-18-74 re fitting if possible
4-17-74	Mr Kracheff Beltone
	454-2650 some inmate
	Patient that we called
	Mr Jackson
	the window Wed
	send bill for visit
10/13/74	X-ray R/O Fx R lower ribs, DX: no fracture seen.
	out of tube 1/20
	5 tabs sent for report
	Eye Clinic
	Eye
	Scheduled for tomorrow
	Rec'd Emerson Bed
	Rec'd Def Def tabs 12/10

DATE	REMARKS & TREATMENT
	BP 110/70 Pulse Regular
	temp 97.8 Resp. 20.
	C/o Pain. L Ribs Chest
	Head to Radiation
	Cos: R - No Pain
	Frontal
12/31/74	Eye Clinic - glasses ordered
1/22/75	Reported from Lab Co
	Planned eye Area
	c shoulder B.P. 122/88 P.80
	No pills supply left
	6 issued Given Na Lab
	Yellow P. to Clerk
	Feeling better am

S-FORM M-5

STATE OF NEW YORK—DEPARTMENT OF CORRECTION

(NAME OF INSTITUTION)

DAILY CLINIC RECORD

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NO. 14131 NAME Snyder 46 y

PHYSICAL CLASSIFICATION

DATE	REMARKS & TREATMENT
10-13-72	Admitted to hospital with complaints of vomiting
10-14-72	Discharged this datey by Dr. Frank
10/13/72	ECG - Within normal limits -
	Dr. Raj
10/19/72	Tetracycline 250 mg
	#16 Sig: 1 4 t.i.d.
10-13-72	Batt in wk mr. snyder seen to-day He states that he has no complaints at present time. He gets his batteries when need and ask for them. He was inquired about the letter - states his complaints dated back to early last summer
10/20/72	Panin - L. Sig: Chol. Wel.
	Sept. Aphtha mur mur.
	Z32 #12 Rx
10-13-72	ECG - Within normal limits - Dr. Raj
12/28/72	- 6 mm - c/o of ring "full of gas"
	to the office when he needs
	needs - + 2 shots #2 taken
	out. Highsmith
12/28/72	Forearm pain → Fore. Rt Cast
	Unable to pass urine Sonne Cath
	Hd & Sft Fair open wt pulsation
	No Guarding Z32 #9 Bs #12 Rx
	Bladder Ind distended

WASSERMANN TEST

DATE	REMARKS & TREATMENT
4/15	Requested chest Xray - Ordered.
	Xray sent
7/24	To request Medication
	Lower abd discomfort
	Seen w/ release
	Volume to my Sick Squad
	Referred to Dr. to
	check Dose. Urinary
	complaint
	0251

S.S. FORM M-5

STATE OF NEW YORK—DEPARTMENT OF CORRECTION

Green Haven C.F.
(NAME OF INSTITUTION)

ONLY COPY AVAILABLE

DAILY CLINIC RECORD

14131

NO. 14131 NAME Snyder B-2-23-20 B.T. A-neg.

PHYSICAL CLASSIFICATION II vision corrected Hearing aid WASSERMANN TEST 3/10/69 Neg

DATE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
7/7/71	Received state glasses, Dr. Frankel	10/24/71	M. C. H. for Cough
7/10/71	Hearing Aid Battery		Battery
7/17/71	" "	10-28	S-WPC refill Battery
7/24/71	" "	10/31/71	Request for specific
8/7/71	" "		referred to sick call
8/13/71	" "	11-2	Hearing aid battery
8/21/71	" "	11-8	M-Ear aches-pain (R) side to
8/27/71	" "		wether-Urinalysis for pus
9/2/71	" "		Ear Wash w/ Peroxide-WPC-Ref
9/7/71	M. Mapley-Eye gtt. Inst.		[illegible]
9/11/71	Battery	11-8-71	CBC — Urine yellow, appears clear; Re 5.0; Sp. Gray. 1.018; Albumen 0; Sugar WBC/HPF Few; Mucus 1+; Epith Occ.; Crystals Few Calcium Oxalate; Bacteria 1
9/18/71	"		
9/23/71	"	11-16	Battery
9/28/71	"	11-21	"
10/2/71	M-Earache Rt. Ear-(O.I) Draining	11-27	"
	Pimples-Otodyne-Battery	12-4	Dermasage Bath
10/4/71	M-Earache Rt. Ear-Otodyne	12-10	"
	Rt. Ear-x3	12-12	Adm. Admitted to hospital for loss of
10/8/71	Battery		motor control of left leg
10/14/71	M-- Inquiry only	12-19-71	Discharged this date by Dr. Mombello on Sod. Sal Gr. 10 QID and Prednisolone QID Minor growth on neck to be removed in nea
10/14/71	Battery		future
10/15/71	M-irrigation-Both Ears.	12-15	Battery
10-19	Battery	12-23	0253

ONLY COPY AVAILABLE

1413T - SNYDER Hy.

TE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
-72	Battery	4-3-72	Battery -
-72	Battery	4-7-72	Battery
-72	Battery #5	4-8-	S. Sore throat - 8A -
-72	Minor Surgery - Dr. Saiken - Excision cyst left shoulder	4/12	Battery
-72	Biopsy Cyst Left Shoulder from N.Y.S. Dept. of Health, Albany, N.Y. - This benign cystic structure is probably derived from an eccrine sweat gland or duct and similar to an hidradenoma papilliferous. What is the exact anatomic location, size & duration? Also age of patient. - Dr Rollins	4/19	Battery
		4/28	Battery
		4/29	Battery
		5/2	Chest Pain + Throat -
-72	Battery		Tetra-D QID x 4
-72	Sutures removed from L Shoulder.		TB - Bottle
-72	Battery	5-5-72	Battery
-72	Battery	5-16-72	admitted to hospital for U.R.I.
-72	Battery	5-19-72	Dishharged this date by Dr. Saiken
	Pregnosoap R. Hearing Aid Repair Ex + Battery	5/30	T - New Battery
	Battery # 1 Log		T - New Cord for hearing aid + Plastic tubing
	Battery	6/4	Battery given request for cord & tubing to Dr
-72	Cold. Throat Inf.	6/9	of new battery
	With rash 4A	7/12	5-00 Pain L. Calf - RI Cap
-72	Battery		+ 98.6 B.P. 110/78
	Battery	10 - 4 hr	Pain in the Back - and L. Iliac Crest
-72	Cold L #3 + 4		And L/S with Salpingeb.
	Temp 100		No Guarding - No Rebound - temp 99
	Battery		No Fever - B3 - No dysuria - Attention
-72	R & G. Cold T. 100.4		B3 - bowel hx
	U R I. Routine - Refuse Q		1253
	Eyes Pass		

1st TETANUS 1st POLIO MAY 15 1969

STATE OF NEW YORK—DEPARTMENT OF CORRECTION

ALL POX VAC 2nd TETANUS JUN 5 1969 Green Haven Prison
POLIO COMPLETED JUL 15 1969 (Name of Institution)

DAILY CLINIC RECORD ONLY COPY AVAILABLE

NO. 14131 NAME SNYDER, CHARLES BLOODTYPE: A-Neg

PHYSICAL CLASSIFICATION II = Vision Corrected, Hearing OK WASSERMANN TEST 3/10/69 Neg

DATE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
4/2/69	Rec'd SSP	2/25/70	Bx'ken
4/6/69	DEWL: Furacin Drops for Ears	2/19/70	Battery
4/7/69	DEWL: Furacin Drops for Ears — OKAY TO receive hearing aid being held - NOTE to Deputy Warden..... COLD: ASA, LOZ	2/25/70	Admitted to hospital per Dr Saiken Med. Observation - Pain in epigastrium left leg, difficulty breathing. Dx: Tandem or rigidity, gastritis
4/11/69	MG: o EARS discharging MG: o closed; EARS clear — Continue — TID		
4/16/69	Batteries = 2 small + 1 large		
4/29/69	Hearing Aid Battery — 4 (Hearing Aid O.D.)	2-26-70	Discharged this date by Dr. Saiken
5/6/69	Referred to Dent	3/5/70	Battery
5/27/69	MG: Head cold; → ASA, LOZ	3/8/70	"
6-23-69	Dr. Frankel Ref. rec'd. St. glasses.	3/16/70	Battery
8-[illegible]-69	Dr. Frankel. Rec'd. St. glasses	3/22/70	Cold - ASA, Ant. Inf. Battery
1/26/69	Plastic Tube	3/26/70	Battery & LOZ
2/21/69	MS Cold EARS ASA, LOZ Furacin Drops	3/31/70	Battery
1/6/70	Battery	4-4-70	Battery
1/9/70	Battery	4/9/70	Battery
1/17/70	Battery	4/14/70	Battery
1/24/70	Battery	4/26/70	Battery
1/23/70	Battery & Tubing	4/30/70	Battery & Wire
1/27/70	Battery	5/6/70	Battery
2/1/70	Battery	5/9/70	Diff. breathing - Epigastric Pain - Gen Discomfort - Combid spas - T
2/5/70	Battery	5/8/70	Battery
2/12/70	Battery (2)	5/11/70	Battery
		5/[illegible]/70	

W-131 - SNIDER

ONLY COPY AVAILABLE

DATE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
5/21/70	Battery	8/26/70	2 Batteries
5/29/70	〃	8/29/70	〃 〃
5/31/70	Battery	9/1/70	〃 〃
6-3-70	〃	9/5/70	〃 〃
6-11-70	〃	9-9-70	〃 〃
6/15/70	〃	9-12-70	〃 〃
6/24/70	〃	9-16-70	2 Batteries
6/25/70	〃	9/19/70	Battery
6/29/70	〃	9/23/70	〃
7/1/70	S- Furacin drops for rt. ear - D&A	9/26/70	S- loss of hearing - No blockage
7/4/70	Battery	9/27/70	Battery
7/7/70	S- Neosone for eyes OD x 3	10/1/70	〃
7/7/70	Battery	10/5/70	〃
7/8/70	〃	10/10/70	〃
7/11/70	〃	10/15/70	〃
7/15/70	T.B.	10/17/70	〃
7/22/70	Battery	10-23-70	〃
7/23/70	Rash under arms #2.0 S- Neosone OD x 3	10-29-70	〃
7/26/70	Battery	10-31-70	Admitted to Hospital for Med. Obs.
7/30/70	〃 - Plastic Tube	11-2-70	Discharged by Dr. Saiken
8/3/70	〃	11/4/70	Battery
8/7/70	Battery	11/8/70	〃
8/11/70	〃	11/12/70	〃
8/17/70	〃	11/18/70	〃
2-18-70	2 Batteries	11/20/70	Suddenly unable to ambulate
3/22/70	〃 〃		Clinic tongue Sent to Admit
			Lost to follow up

S. FORM M-5

STATE OF NEW YORK—DEPARTMENT OF CORRECTION

CORRECTIONAL FACILITY GREEN HAVEN
(NAME OF INSTITUTION)

DAILY CLINIC RECORD

ONLY COPY AVAILABLE

NO. 14131 NAME Snyder

PHYSICAL CLASSIFICATION

WASSERMANN TEST 3-10-69 NR

DATE	REMARKS & TREATMENT	DATE	REMARKS & TREATMENT
11-20-70	Admitted to hospital with complaints of difficulty talking	2/6/71	BATTERY
11-21-70	Discharged this date by Dr. Saiken	2/10/71	"
1/25/70	BATTERY (1)	2/15/71	"
1/27/70	S-EAR-CORTISPORIN	2/20/71	"
11/[illegible]/70	Ears and Teeth	2/23/71	" AND (1) CORD
2/2/70	BATTERIES	3/1/71	BATTERY
2/12/70	" (1)	3/5/71	"
12/17/70	hear hearing Myself	3/7/71	Battery
	received for it	3/12/71	S-APPOINTMENT FOR HEARING TEST
	ear from Belfort	3/17/71	HEARING AID SENT TO BOB MACNEIL
2/13/70	HEARING AID-BATTERY		FOR REPAIR
12/21/70	HEARING AID-BATTERY	3/19/71	BATTERY
2/23/70	BATTERY	3/22/71	GELUMINA
2/26/70	"	3/25/71	BATTERY
2/30/70	"	3/29/71	"
2/31/70	S-RT. EYE-IRRIGATE-VERY LIGHT PRESSURE	3/31/71	-M-INDOCIN: SOD SAL 10GR
1/7/71	BATTERY		FOR HIP PAIN-REPAIR LIST
1/10/71	GELUMINA	4/3/71	BATTERY
1/11/71	BATTERY	4/8/71	"
1/14/71	"	4/12/71	"
1/17/71	"	4/15/71	S-ABC-LOZ-CTM-COLD-REF LIST
1/20/71	"	4/15/71	REFERRED TO REFRACTION LIST, DR. FRANKEL
1/27/71	"	4/18/71	Given new hearing aide battery
1/31/71			

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14131 - SNYDER

DATE	REMARKS & TREATMENT
4/26/71	BATTERY
4/29/71	"
5/1/71	"
5/7/71	"
5-11-71	Audiologic Report - Jerrold L. Galleher, M.A., Chief Audiologist - St. Francis Hosp. HEARING AID EVALUATION - This 46 yr old male inmate of Green Haven Prison was initially referred for an audiogram by Dr. Salken, prison physician. The audiogram, (accomplished on 3-16-71), revealed a moderately severe hearing loss, bilaterally. The prisoner was wearing a Siemens Ultra, on-the-body hearing aid with the receiver at the right ear. The function of this instrument was evaluated and was not considered adequate to meet the prisoner's needs. For this reason, Mr. Snyder was scheduled for a Hearing Aid evaluation. Mr. Snyder was again seen on 4-2-71. Speech reception thresholds obtained at that time fell to a level of moderately severe hearing loss, bilaterally. No decrease in the thresholds of discomfort were noted in either ear. Speech discrimination ability at the right ear was moderately reduced, and at the left ear was severely reduced. In free field, some binaural summation occurred and a marked improvement in discrimination ability was noted. Initially, several moderate gain, behind-the-ear instruments were evaluated. These instruments provided little or no compensation for the patient's hearing loss. For this reason, more powerful on-the-body instruments were evaluated atthe right ear. The most desirable compensation for the patient's loss of hearing was provided by a Norelco 8123 using a PHP receiver at the right ear. The instrument was adjusted to a normal tone setting and a 3½ peak clipping setting was used. With this instrument, a normal speech reception threshold, and normal speech discrimination in quiet and in noise, were obtained. No gross change in the threshold of discomfort was noted in the aided situation. On the basis of the above, it is recommended that a Noreloc 8123, on-the-body instrument be obtained. The instrument should be used with a PHP receiver at the right ear with a custom-standard ear mold using a snap fastener. The patient presently uses an adapter in a polyetheline tubing which, in truth, reduces the function of his instrument. It is recommended that the Norelco instrument not be used in this fashion, but in the fashion recommended above.
5/13/71	BATTERY
5/17/71	"
5/22/71	S-PAIN RT. EAR JG-OTODYNE
5/25/71	BATTERY
5/29/71	BATTERY
6/2/71	"
6/5/71	INJURY TO LT. ARM-X-RAY TAKEN
	SLING " PAC
6/7/71	Received hearing aids this date
6-5-71	Admitted to hospital for injury to left ar X-rayed prior to admission
6-6-71	Discharged this date by Dr. Mombello on #1 5A and 10A.
6/9/71	Refracted state glasses ordered, Dr. Frankel
6/17/71	BATTERY
6/23/71	Recieved ~~xxxxxx~~ state glasses, Dr. Frankel
6/5/71	x-ray-left wrist&left elbow injured playi
6/6/71	ball-no bony injury-Dr. Mombello x-ray-left elbow & wrist injured in fall- no bony injury-Dr. Mombello
6/14/71	BATTERY
7/2/71	"

NEW YORK STATE DEFENDANTS' EXHIBIT "A" DEPARTMENT OF CORRECTION

FISHKILL CORRECTIONAL FACILITY

WORK RELEASE PROGRAM

ONLY COPY AVAILABLE

I ACCEPT THE FOREGOING PROGRAM AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS THEREOF. I UNDERSTAND THAT I WILL BE UNDER THE SUPERVISION OF THE STATE DEPARTMENT OF CORRECTIONAL SERVICES WHILE I AM AWAY FROM THE PREMISES OF THE INSTITUTION AND I AGREE TO COMPLY WITH THE INSTRUCTIONS OF ANY PAROLE OFFICER OR OTHER EMPLOYEE OF THE DEPARTMENT ASSIGNED TO SUPERVISE ME. I WILL CARRY A COPY OF THIS MEMORANDUM ON MY PERSON AT ALL TIMES WHILE I AM AWAY FROM THE PREMISES OF THE INSTITUTION AND I WILL EXHIBIT IT TO ANY PEACE OFFICER UPON HIS REQUEST. I UNDERSTAND THAT MY PARTICIPATION IN THE PROGRAM IS A PRIVILEGE WHICH MAY BE REVOKED AT ANY TIME, AND THAT IF I VIOLATE ANY PROVISION OF THE PROGRAM I MAY BE TAKEN INTO CUSTODY BY ANY PEACE OFFICER AND I WILL BE SUBJECT TO DISCIPLINARY PROCEDURES. I FURTHER UNDERSTAND THAT IF I INTENTIONALLY FAIL TO RETURN TO THE INSTITUTION AT OR BEFORE THE TIME SPECIFIED IN THE MEMORANDUM I MAY BE FOUND GUILTY OF A FELONY.

I WILL NOT GIVE OR RECEIVE ANY WRITTEN OR VERBAL COMMUNICATION BETWEEN ANY PERSON OR PERSONS CONFINED IN FISHKILL CORRECTIONAL FACILITY TO AN OUTSIDE SOURCE; NOR WILL I CARRY ANY ARTICLES OTHER THAN THOSE OF MY OWN AND REQUIRED WITHIN THE WORK RELEASE PROGRAM TO OR FROM THE INSTITUTION.

CONDITIONS OF SUPERVISION

I AGREE TO COMPLY WITH THE TERMS OF MY WORK RELEASE PROGRAM AND I WILL CARRY OUT THE INSTRUCTIONS OF MY PAROLE OFFICER OR OTHER EMPLOYEES OF THE DEPARTMENT. I WILL CONDUCT MYSELF IN A LAW ABIDING MANNER AND WILL NOT ALLOW MY BEHAVIOR TO BECOME A MENACE TO THE SAFETY OF ANY INDIVIDUAL OR GROUP OF INDIVIDUALS.

Signature _____

CHARLES SNYDER WR 26

TEMPORARY RELEASE COMMITTEE

MEMBER R Wiggins

MEMBER K Luenzel

CHAIRMAN A. E. Yanublis

DIRECTOR _____

DATE 10/25/73

DEFENDANTS' EXHIBIT "B"

FISHKILL CORRECTIONAL FACILITY - WORK RELEASE PROGRAM

BOUNDS OF CONFINEMENT

CHARLES SNYDER WR# 26

The above named man is a participant in the Work Release Program at Fishkill Correctional Facility and is attending Dutchess Community College. He is permitted to eat his meals in approved eating places and shop in various stores in the area while going to and from work.

His Route to travel between Fishkill Correctional Facility and his place of employment shall be the most direct route using primary state roads where ever possible.

A. Yanitelli
CHAIRMAN TEMPORARY
RELEASE COMMITTEE

INMATES SIGNATURE & NUMBER

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

DEFENDANTS' EXHIBIT "C"

FISHKILL CORRECTIONAL FACILITY

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Work Release - Parole Summary

CHARLES SNYDER WR 26 IIS 1150A15

Charles Snyder began the educational release program at Dutchess County Community College on 6-20-73 - summer session - and presently continues to be attending the Dutchess County College with a major in Nursing. As Mr. Snyder has a hearing disability, he was referred to the Office of Vocational Rehabilitation, 26 Colley Street, Poughkeepsie, NY, 452-5325. Contacts throughout this period of education have been made through Mr. Gary Pfeifer, Assistant Board of Continuing Education. Mr. Pfeifer has reported to this writer that Mr. Snyder has been doing adequate work in the school. As recently at January 1974, Mr. Pfeifer informed this writer that Mr. Snyder had failed his Biology Lab course. Mr. Pfeifer was to make arrangements for Mr. Snyder to be given a second chance at passing the lab section of Biology. In the last 2 months Mr. Snyder has been utilized as an inmate driver for Work Release.

During Mr. Snyder's first several months in the Work Release Program, his adjustment was somewhat marginal in that he had on one occasion gone to a nursing home outside of his extended bounds of confinement and falsely claimed that he was involved in a special nursing program, without mentioning the Work Release Program, and applied for employment. This employer contacted Green Haven Corr. Facility at that time and when it was ascertained that he was involved with the Work Release Program this part-time employment was refused. Also, Mr. Snyder, without informing his parole officer or correction counselor, went to a hearing aid store in the Poughkeepsie area and charged an article in the name of his correction counselor, Robert Higgins. At that time Mr. Snyder was reprimanded for his failure to adhere to the institution rules and regulation

RESPECTFULLY SUBMITTED:

KENNETH GUMPEL - PAROLE OFFICER

CHAIRMAN - TEMPORARY RELEASE COMMITTEE

MEMBER - TEMPORARY RELEASE COMMITTEE

MEMBER - TEMPORARY RELEASE COMMITTEE

KG:ldf
D:2-4-74
T:2-5-75

DEFENDANTS' EXHIBITS "D"

FISHKILL CORRECTIONAL FACILITY

WORK RELEASE PROGRAM

TO: A. Da Silva - Program Director

FROM: Parole Officer Kenne th Guempel

SUBJECT: CHARLES SNYDER WR 26

DATE: March 26, 1974

On 3-26-74 this writer received a telephone call from Mr. Gary Pfeifer, Assistant Dean of Continuing Education, Dutchess County Community College, who stated that he had seen Mr. Snyder in Pleasant Valley stopped by a State Trooper.

This writer called the State Police - Millbrook, 677-6321, and ascertained that it was Trooper Jorgenson or Trooper Anderson who was covering that area on Friday, March 22, 1974. At approximately 1:30 PM this writer received a telephone call from Trooper Jorgenson who stated that he had stopped Mr. Snyder on March 22, 1974 for speeding. Trooper Jorgenson explained that Mr. Snyder was caught on Vascar at 51.1 miles per hour in a 30 mph zone. Trooper Jorgenson explained that the summons was answerable in the Town of Pleasant Valley Court, Rt. 44, Pleasant Valley, NY.

KG:ldf

Kenneth Guempel

KENNETH GUEMPEL - PAROLE OFFICER

DEFENDANTS' EXHIBIT "E"

Mr. Charles Snyder WR26

Mr. A. DaSilva, Work Release, Chairman of TRC

DISCIPLINARY ACTION

March 29, 1974

On 3/27/74 the Temporary Release Committee met with you to discuss your actions of 3/22/74. It was the decision of the committee that you did violate your bounds of confinament agreement on that date. The committee felt that the violation was a serious one and isfrecommending that you be removed from the Work Release Program.

MR. A. DaSILVA
Work Release Program Director

AD/vab

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER, Plaintiff,	:	
-against-	:	ANSWER
PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in capacity as Deputy Superintendent of Fishkill Correctional Facility, Defendants.	:	74 Civ. 5597 C.B.M.

Defendants, by their attorney LOUIS J. LEFKOWITZ, Attorney General of the State of New York, respectfully allege:

FIRST: Deny each and every allegation of the complaint contained in paragraphs "2","3","5", "12", "20", "29", "35", "38" and "41".

SECOND: Deny knowledge and information sufficient to form a belief as to each and every allegation in paragraphs "13", "21", "22", "24", "25", "26", "27", "28", "30" and "31".

THIRD: Admit each and every allegation in paragraph "4" except deny knowledge and information sufficient to form a belief as to whether plaintiff Snyder is deaf and whether with the aid of a proper hearing aid, he is able to distinguish most sounds.

FOURTH: With respect to paragraph "11" deny so much as alleges that plaintiff drove a car to school every day since he ceased performing that duty in January 1974 and deny

that plaintiff's evening arrival time at Fishkill was dependent upon the schedules of the other participants in The Work Release Program.

FIFTH: Deny each and every allegation in paragraph "14" except admit that plaintiff received a speeding ticket in Pleasant Valley on March 22, 1974 and deny knowledge and information sufficient to form a belief as to whether plaintiff made arrangements to pay the fine.

SIXTH: With respect to paragraph "18" deny that plaintiff was given no information regarding the powers and duties of The Temporary Release Committee.

SEVENTH: Deny each and every allegation in paragraph "19" except admit that plaintiff appeared before The Temporary Release Committee and did not receive a written statement of the charges against him or of the facts underlying the charges.

EIGHTH: With respect to paragraph "23" deny knowledge or information sufficient to form a belief as to what happened to plaintiff after transfer to Green Haven on April 15, 1974 and his privileges or lack thereof at Green Haven.

NINTH: With respect to paragraphs "36" and "39" respectfully refer the Court to their answers to those paragraphs realleged therein.

AS AND FOR A FIRST SEPARATE
AND COMPLETE DEFENSE,
DEFENDANTS ALLEGE:

TENTH: Allege that this Court does not have jurisdiction of this action under 28 U.S.C. § 1343(3) or that this action is authorized by 42 U.S.C. § 1983 and that none of plaintiff's rights protected under the United States Constitution have been violated.

AS AND FOR A SECOND SEPARATE
AND COMPLETE AFFIRMATIVE
DEFENSE, DEFENDANTS ALLEGE:

ELEVENTH: Plaintiff fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD SEPARATE
AND COMPLETE AFFIRMATIVE
DEFENSE, DEFENDANTS ALLEGE:

TWELFTH: This Court lacks subject matter jurisdiction over the subject matter of this action.

AS AND FOR A FOURTH SEPARATE
AND COMPLETE AFFIRMATIVE
DEFENSE, DEFENDANTS ALLEGE:

THIRTEENTH: Plaintiff was afforded all the process that was due him.

WHEREFORE, it is respectfully requested that plaintiff's claim be in all respects dismissed and that this Court grant such further relief as it may deem just and proper.

Dated: New York, New York
May 30, 1975

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
By

DAVID L. BIRCH
Deputy Assistant Attorney
General
Tel. (212) 488-3447

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER, Plaintiff, -against- PETER PREISER, individually an in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility, Defendants.	:	AFFIDAVIT 74 Civ. 5597 C.B.M.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DAVID L. BIRCH, being duly sworn, deposes and says:

1. I am a Deputy Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for defendants herein. I submit this affidavit to explain present procedures followed by The Temporary Release Committee at Fishkill Correctional Facility to remove inmates from The Temporary Release Program.

2. On information from Anthony DaSilva, Chairman of The Temporary Release Committee, William Donnino, then Counsel and Deputy Commissioner of the Department of Correctional Services, issued a memo dated March 12, 1975 requiring any removal of an inmate from participation in The Temporary Release Program to be accompanied by a Superintendent's Proceeding as provided in 7 NYCRR Part 253. A copy of the memo is attached hereto.

Deponent apologizes to the Court for not having made this clear at the hearing but deponent and Mr. DaSilva misunderstood each other at the time they discussed the problem during one of the recesses. Therefore, deponent was not made aware of this until after the trial, and Mr. DaSilva did not realize that the information was required until the final colloquy between the Court and deponent.

Thus, an injunction regarding the present and future procedures of The Temporary Release Committee is unnecessary.

DAVID L. BIRCH

Sworn to before me this
30th day of May, 1975

Assistant Attorney General
of the State of New York

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

BENJAMIN WARD
COMMISSIONER

March 12, 1975

M E M O R A N D U M

TO: Superintendents, Group and Division Heads

FROM: William C. Donnino, Deputy Commissioner & Counsel

SUBJECT: Chapter V and VI Proceedings

After one year's review of Chapter V and VI Proceedings, the following observations, comments and directions are set forth:

In General

It is not necessary to provide a cover letter or memorandum when forwarding reports of Chapter V or VI proceedings to Central Office absent a need to supplement the information in the reports. Information recorded on all forms must be legible.

Inmate Interview

Adjustment Committee, Superintendent's Proceeding, Time Allowance and Protective Admission proceedings must involve an in-person interview with the inmate. In Time Allowance proceedings where the inmate is not present in the facility, an in-person interview is not required if the maximum good behavior allowance available is to be credited against the inmate's term.

Inmate Presence

An inmate who refuses to attend a proceeding shall be advised that the proceeding will be conducted in his absence if he continues in his refusal to attend. If he thereafter continues to refuse to attend the proceeding, the proceeding may be conducted in his absence. A record shall be made of the time, place, manner and persons present when the inmate was advised to attend the proceeding and refused. If the inmate refuses to attend Superintendent's Proceedings, the inmate shall be presumed to have denied the charge(s).

RECEIVED
MAR 17 1975
Dept. Supt. Sec
Services
F. C. F.

Pending Criminal Charges

A Superintendent's Proceeding shall not be deferred or delayed pending the results of an investigation or prosecution of an inmate for an act committed in the institution that may constitute both a crime and a violation of the Department rules.

Prompt Proceedings

Once it is determined that an inmate should be accorded an Adjustment Committee or Superintendent's Proceeding, such proceeding shall be held promptly.

Insofar as practicable an inmate who is in confinement awaiting an Adjustment Committee or Superintendent's Proceeding, should be accorded a preference over inmates awaiting such proceedings but not in confinement.

In the absence of exigent circumstances, as a guideline: for inmates confined and awaiting an Adjustment Committee or Superintendent's Proceeding, the Adjustment Committee proceeding should be held within three days and the Superintendent's Proceedings within seven days; for inmates not in confinement, the Adjustment Committee proceeding may be held within seven days and the Superintendent's Proceeding within 14 days.

Superintendent's Proceedings

The charges must be carefully drawn to specify the incident of behavior involved.

The entire proceeding shall be electronically recorded.

A new form ("Superintendent's Proceeding Notice and Assistance") is attached. (It should be duplicated for immediate use. It will be replaced by a preprinted popapart form in the near future.) It is for use by the person directed to serve the inmate with the formal Superintendent's Proceeding charges. In automatic review cases, it should be forwarded to the Commissioner with the Superintendent's Proceeding records.

Where an inmate admits a variation of the charge at a Superintendent's Proceeding, he must admit to facts encompassed or contained in one or more of the formal charges. The admitted facts must constitute a danger to life, health, security or property if there is to be confinement to a Special Housing Unit /Chapter V, section 253.5 (a) 7. The Superintendent's Proceeding Record Sheet must clearly specify what acts the inmate admits.

The person conducting the proceeding, in addition to reliance upon written evidence, should interview employees who submitted the misbehavior reports as well as others who may be

of assistance in providing relevant information, including, for example, any person who may have conducted an investigation of the incident.

Following every Superintendent's Proceeding, the inmate involved must be given a statement of the evidence against him for those charges which are not dismissed. Form 253-C, "Superintendent's Proceeding Report to Commissioner" should be used. Item #5 on this form is entitled "Summary of Evidence" or "Summary of Case". Inmate should be given the date and name of persons submitting misbehavior reports, the names of any witnesses interviewed (except where there is concern for the safety of witnesses) and a very brief summary of the incident and evidence.

It is the responsibility of the person conducting the Superintendent's Proceeding to exercise restraint and judgment in establishing dollar value for restitution. Factors which should be considered are depreciation, ability of the inmate to pay, inmate incentive allowance earnings, time span for payment, etc. A token amount of restitution is in most cases sufficient. While restitution may be a reasonable deterrent and sanction, there can be cases when the dollar amount involved causes unnecessary hardship & bartering amoung inmates and may discourage initiative. It is appropriate for dispositions of such proceedings to include specific directions for payment, including for example, time span for payment and percentage of earnings to be applied towards restitution during such period.

There are no provisions in our rules for Superintendent's Proceedings involving restitution for damages to property of one inmate by another inmate. The rules provide only for restitution for loss or intentional damage to State property.

Superintendent's Proceedings forwarded to the Commissioner for review should contain:

1. The Superintendent's Proceeding Report to the Commissioner (Form 253-C)
2. The Record of the Proceeding Form (253-B)
3. The Notice and Assistance Form (253-D)
4. Formal Charge Sheet (253-A)
5. Copies of Misbehavior Reports
6. Any other information or reports which might contribute relevant information (copies of Adjustment Committee reports, Use of Force Forms, etc.)

Superintendent's Proceedings with dispositions which will actually delay Conditional Release if affirmed should be forwarded promptly to the Commissioner with a covering note to that effect. For example, a proceeding with 15 days lost time recommendation for an inmate who has had his final Time Allowance and was scheduled for Conditional Release within a short time should be identified so that the Commissioner's review can be completed before there is an actual delay of release.

Proceedings after Transfer for Lost Property

It is the responsibility of the sending facility upon discovering lost or damaged State property to obtain a statement from the inmate as to the reasons for the loss, damage, etc., and then forward a complete investigation report with any recommendations for a Superintendent's Proceeding to the receiving facility.

Temporary Release Misbehavior

Where an inmate engages in an act of misconduct while on temporary release and a disciplinary sanction is being considered, a Superintendent's Proceeding shall be conducted. If revocation of a continuing temporary release program (e.g., work release, education release, certain industrial training leaves or community services programs) is considered for an act of misconduct committed within or without the facility, a Superintendent's Proceeding shall be conducted.

Inmates who are arrested before the period of temporary release ends should not be charged with "absconding" even if the arrest resulted in return after the temporary release period. They should be charged with any violations of the release agreement which are apparent or with the actual offense alleged. In the latter case, a statement should be obtained from the arresting officer.

In the interest of fairness and to prevent disparity between facilities, the following guidelines are suggested where the facility wishes to assess time at a Superintendent's Proceeding following absconding or late return after temporary release. The suggested figures are simply guidelines and are not intended to replace or eliminate the possibility of other types of dispositions for such infractions or even to mandate loss of time where the facility feels that other action would be more appropriate. Each situation should continue to be individually evaluated and loss of time used as desired either alone, in combination with other restrictions or not at all.

However where lost time is considered, the follcwing guidelines may be useful:

Category	I	II	III	IV	V	VI
Time Overdue	Up to 1 Day	1-7 Days	8-14 Days	15 to 30 Days	Over 30 Days	Over 60 Days
Lost Time Guideline	Up to 1 Day Per Hour	30-60 Days	60-120 Days	120-240 Days	240-360 Days	1 Year or More

Automatic Review at Adjustment Committee Action

When an inmate is confined in a Special Housing Unit for more than 30 days by the Adjustment Committee (either through successive extensions of Adjustment Committee actions or Adjustment Committee extensions in combination with a prior Superintendent's Proceeding disposition) the entire record of the matter including the Superintendent's comments must be forwarded to the Commissioner and the inmate so advised. Automatic review by the Commissioner of Adjustment Committee actions is mandated by Chapter V, Section 270.1 (d)(2)(i). Form 252-D entitled "Superintendent's Action on Review of Adjustment Committee Report" should be used. A copy of this form is attached.

Material forwarded to the Commissioner should include the above Form 252-D, Adjustment Committee Report, copies of misbehavior reports, Superintendent's Proceeding material if such a proceeding was held and any other information and reports which might contribute relevant information.

If there are any existing cases which have not been processed as above, such processing should be done as soon as possible.

Time Allowance

Time Allowance Committees must review program performance in addition to the inmates disciplinary record.

Granted or withheld Time Allowance involves not only good behavior but efficient and willing performance of duties assigned as well as progress and achievement in assigned treatment programs viewed in the light of the inmate's attitude, capacity and efforts made within the limits of that capacity.

Time Allowance Committees must review with the inmate not only conduct records but assignment and program performance in the light of capacity. The reasons given in the Good Behavior Allowance report (Form 261-B), Section #7, "Release - should provide information not only about the number and the seriousness of misbehavior reports, etc., but comments on duty and program performance as well as capacity.

Formal Transfer Consideration for Inmates in Special Housing

Inmates in Special Housing at a facility for more than 90 days and at 90 day intervals thereafter should be formally considered for transfer via appropriate transfer request forms (DCG-11) for Central Office review.

Protective Admissions

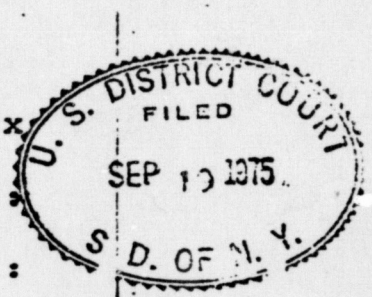
The reasons for voluntary protection admissions must be well documented on the appropriate forms (Form 304.3-I and II) as per Administrative Bulletin 113.

Attachments

WCD:tw

Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

74 CIV. 5597

APPEARANCES

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CONSTANCE BAKER MOTLEY, D. J.

0274

Findings of Fact and Conclusions of Law

Plaintiff in this action is presently incarcerated in Greenhaven Correctional Facility (hereinafter "Greenhaven"). Plaintiff claims that he was transferred to Greenhaven from Fishkill Correctional Facility (hereinafter "Fishkill"), where he had been participating in a work release program, in derogation of his constitutional right to due process.

Plaintiff seeks an injunction ordering the defendants to return him to the work release program at Fishkill and to remove from his record all references to his transfer. Plaintiff also seeks damages for the allegedly wrongful transfer.

Jurisdiction of this court is based on 28 U.S.C. § 1343(3)(4) and 28 U.S.C. § 1331. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil procedure.

After a full evidentiary hearing on May 15, 16 and 19, 1975, the court, pursuant to Fed. R. Civ. P. 65 (a)(2) sua sponte consolidated the trial of the case with

the hearing on the motion for preliminary injunction.

For the reasons which follow, the court finds plaintiff was transferred from Fishkill to Greenhaven in violation of the due process requirements of the Constitution. Accordingly, defendant is ordered to return plaintiff to Fishkill, and to allow him to participate in that facility's work release program until such time as he is afforded the due process required in order to remove plaintiff from the program and transfer him to another institution.

Findings of Fact

Prior to the transfer of which he complains, plaintiff was an inmate in the Fishkill Correctional Facility. While at Fishkill plaintiff participated in the prison work release program, taking courses leading to a nursing degree at nearby Dutchess Community College. Work release is a prison program in which eligible inmates are allowed to leave the institution for up to fourteen hours per day for on-the-job training or employment. In order to be a participant in such a program an inmate must

be eligible for release on parole or conditional release within one year. New York Correction Law § 851(2)(3) (McKinney Supp. 1972).

In order to take part in the work release program plaintiff was required to sign agreements relating to the conditions of his supervision and travel limitations. The "conditions of supervision" agreement bound plaintiff to the terms of the work release program and ordered him to follow the instructions of the parole officers and "generally conduct himself in a law-abiding manner." (Defendant's Exh. A, Tr. at 31.) The "Bounds of Confinement Agreement" provided, in pertinent part, that plaintiff's route of travel between Fishkill and Dutchess Community College" ". . . be the most direct route using primary state roads wherever possible." (Defendant's Exh. B, Tr. at 32.) Plaintiff's alleged infractions, which resulted in his appearance before the Fishkill Temporary Release Committee and his eventual expulsion from the work release program and transfer to Greenhaven, arose primarily from purported violations of those agreements.

Hearings Before the Temporary Release Committee.

The temporary release committee, also known as the adjustment committee (hereinafter "committee") is the body authorized to modify or revoke a temporary release program within the institution. New York Correction Law § 851(11) (McKinney Supp. 1972). Plaintiff was seen by this committee on three occasions prior to his transfer to Greenhaven.

In January of 1974 Mr. Snyder and the other inmates in his car were reprimanded by the committee for repeated tardiness in returning to the prison in the evening. (Tr. 46-47, 59-60.) Plaintiff explained that his delay was the result of having to "round up" the other men in his car from the various "houses and gin mills and places of ill-repute" before returning to Fishkill in the evening. (Tr. 46, cf. Tr. 90, 114, 151.)

In February of 1974 Mr. Snyder was again called before the committee. At that time he was charged with purchasing batteries for his hearing aid without permission and for leaving the prison without authorization. (Tr. 60-62.) Plaintiff told the committee that he bought the

batteries with his own money, in violation of prison regulations, because he needed them in order to hear adequately and that on the one or two occasions at issue in which he left the prison (to go to a heart fund drive or the college library) he had understood that he had been given permission to go. (Tr. 61.)

Plaintiff was last seen by the Fishkill committee in March, 1974. Plaintiff was at that time charged with having exceeded his bounds of confinement (Tr. 13) and questioned regarding the smuggling of letters from the prison to a female student at Dutchess Community College. (Tr. 14-15.)

The committee accused Snyder of exceeding his bounds of confinement at the March meeting after receiving a telephone call from a dean at Dutchess Community College, who reported seeing Snyder being stopped by a state trooper on a road far from his authorized route of travel. (See Defendant's Exh. D.) Snyder explained that he had been driving the children of an ill friend to school when he was stopped and that the exigent circumstances of the friend's illness caused him to deviate from his approved bounds. (Tr. 15, 32-37, 39, 95-96.) Plaintiff

was found to have exceeded his bounds of confinement. He was transferred to Greenhaven shortly after this hearing.[1/]

Reasons for Transfer

The testimony at the trial makes clear that plaintiff was transferred as a result of his general adjustment to the work release program and previous program violations, as well as the violation of the bounds of confinement discussed at the March meeting.

Anthony Da Silva, chairman of the Fishkill temporary release committee, testified that he believed Snyder to be a manipulative man who had made poor adjustment to the program and that this general adjustment problem was part of the reason for his removal from the program. (Tr. 105-106, 128.)

Mr. Da Silva also testified that Snyder's past minor infractions of the prison rules and regulations were factors contributing to his removal and transfer. (Tr. 99, 128.) These past cumulative violations included buying a hearing aid cord and charging it to a corrections

counselor, charging a magazine subscription, buying batteries for his hearing aid without permission and going into a clothing store in the middle of the day when he was supposed to be at school. (Tr. 129.)

Notice

It is undisputed that plaintiff never received written notice of the charges against him at the February and March committee meetings and that he received neither written nor oral notice of the reasons for which he was called before the committee in January. (Tr. 57, 58, 114, 154.)

As noted above, it is clear that plaintiff received no written notice of the charges against him at the March hearing which precipitated his transfer. Plaintiff testified that he never even received oral notice of the alleged violations; that he was merely placed on "hold" status[2/] upon his return to the prison on the evening of March 26 and, without being told why, was brought before the committee the next day. (Tr. at 9-11.)

The only evidence that plaintiff may have received oral notice of the charges of the March meeting is the testimony of Mr. Da Silva, chairman of the Temporary Release Committee, that he believed Mr. Snyder's parole officer informed him (Snyder) of the charges. The parole officer never testified, however, and the conversation which Da Silva reconstructed between himself and the parole officer was less than conclusive evidence that Snyder had, in fact, been informed. (Tr. 123-124.)

The evidence adduced in court makes clear that Snyder was informed only in the most general way of the charges against him at the February hearing. Moreover, these charges were, apparently, not even clear to him at that time. (Tr. 87.) The testimony indicates that Snyder was not informed of the specific charges against him prior to the February meeting. (Tr. 87, 120.) Mr. Snyder was told merely that he had not "followed the instructions of the counselor" and would be seen by the Temporary Release Committee. (Tr. 120.)

Evidence Adduced at the Hearing

Of course, since Mr. Snyder was not properly

informed of the charges against him, he could not adequately prepare a defense to those charges, although he did ttempt to offer explanations for each incident or offense when confronted with them by the committee. (See Tr. at 14, 15, 46, 47, 59, 61, 90, 95, 114, 151.)

Mr. Snyder was never given the opportunity to have a lawyer or anyone else assist him at these meetings. Further, he was never told that he could remain silent in response to questions asked by the committee. There is indication that Snyder was also hampered in these meetings by his hearing problem, although the extent to which this actually handicapped him is in dispute.

Notice of Decision

The only evidence that Snyder received any formal notification of the decision of the Temporary Release Committee after any of the meetings is the written notice which he received after the March meeting, which informed him that the Committee had determined that he had violated his bounds of confinement and recommended his removal from the work release program. (Defendant's Exh. E.)

Conclusions of Law

In light of the above facts, the court finds that plaintiff was transferred in violation of applicable regulations as well as in violation of plaintiff's right to due process.

7 N.Y.C.R.R. § 250 et seq. Applies to Temporary Release Committee Hearings.

The statute establishing work release programs provides that an inmate who violates any provision of the program or any rule or regulation regarding conduct within the program is subject to the same disciplinary measures as if he violated a rule or regulation within the prison. N. Y. Correction Law § 854(2). An inmate may be removed from the program by the prison superintendent.

> "The superintendent of the institution may at any time, and upon recommendation of the temporary release committee or of the commissioner or of the chairman of the state board of parole or his designee shall,

revoke any inmate's privilege to participate in a program of temporary release."

N. Y. Corr. Law § 853(8)

Standards for disciplinary measures and procedures in state prisons are set forth in 7 N.Y.C.R.R. § 250 et seq. ("Procedures for Implementing Standards of Inmate Behavior.")

Part 253 of those regulations provides for a hearing, called a "superintendent's proceeding" in cases where "there is reasonable cause to believe that an inmate's behavior has constituted a danger to life, health, security or property, or that an inmate has deliberately failed or refused to follow the guidance and counseling of the adjustment committee. . . ." (§ 253.1). The possible dispositions after such a hearing include (1) reprimand; (2) loss of one or more specified privileges for a specified period; (3) temporary or permanent change of program. (Emphasis supplied) § 253.5.

The court concludes that because the March hearing resulted in plaintiff's permanent change of program, as well as his transfer to another institution, this hearing was, in fact, what is defined in the regulations as a superintendent's proceeding, and, as such, should have been conducted under the standards governing superintendent's proceedings set forth in the regulations.

The court further notes that the statute authorizing the temporary release program provides for removal from such a program by the prison superintendent. N. Y. Corr. Law § 853(8). The statutory scheme thus appears to envision removal or discharge from a release program following a determination by the superintendent, presumably after a proper hearing. Moreover, it is clear that the deprivation involved in this case — transfer to a more secure prison, loss of the privilege of participating in a release program and possible loss of earlier parole — is as or more substantial than the sanctions and dispositions which are authorized by the statute after a superintendent's proceedings. § 253.5, supra. The protections afforded in such hearings are, therefore, applicable to this case.

Before a superintendent's proceeding is held, the inmate must be furnished with a written formal charge specifying the particulars of the incident involved and the date, time and place of such incident. § 253(2)(b). Notice and assistance to the inmate is also required in a superintendent's proceeding. The regulations provide that a prison employee must be designated to furnish assistance to the inmate. Such employee must give the inmate a copy of the charge and explain the nature of the proceeding and the charge, as well as assist the inmate in investigating and presenting any reasonable factual claim the inmate may make. A report of the action taken and the results of the investigation, if any, by the person designated to furnish assistance to the inmate must be given to the person conducting the proceeding before the hearing is commenced. § 253.3.

It is clear that the protections set forth in the regulations governing superintendent's hearings and which the court finds applicable to the March hearing which precipated plaintiff's transfer were not afforded plaintiff.

0287

Due Process Standards Applicable to the March, 1974 Hearing.

The requirements of due process established by case law in March of 1974 and applicable to a transfer hearing included, at minimum, the right of the prisoner to know the charges against him, the right to know what actions will be met with sanctions, the general range of sanctions which may be imposed for given offenses and the right to explain his behavior before a relatively impartial tribunal. Newkirk v. Butler, 364 F.Supp. 497 (S.D.N.Y. 1973), modified, 499 F.2d 1214 (2d Cir. 1974). Cf. Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971) (due process standards applicable to placing an inmate in segregation).

In Morrissey v. Brewer, 408 U. S. 471 (1972), the Supreme Court held that minimum requirements of due process applicable to a parole revocation hearing included written notice of the claimed parole violations, disclosure to the parolee of the evidence against him, an opportunity to present evidence and witnesses and to cross-examine adverse witnesses before a neutral hearing body and a written statement after such hearing indicating the reasons for revoking the parole. (408 U.S. at 489.) The court notes that many

courts in other circuits have applied the standards set forth by the Supreme Court in Morrissey to internal prison disciplinary and transfer hearings. See Gomes v. Travisono, 353 F.Supp. 457 (D.R.I. 1973), modified, 490 F.2d 1209 (1st Cir. 1974), cert. granted, 94 S.Ct. 3200 (1974) (transfer hearing); Hoitt v. Vitek, 361 F.Supp. 1238 (D. New Hamp. 1973), aff'd 502 F.2d 1158 (1st Cir. 1973) (transfer hearing); Ault v. Holmes, 369 F.Supp. 288 (W. D. Ky. 1973) (transfer hearing).

Because the transfer at issue involved a major deprivation of liberty, in that plaintiff was transferred to a more secure prison, was no longer able to participate in the work release program and was likely to be deprived of earlier parole, thereby leading to a longer period of incarceration than would otherwise be the case,[3/] fundamental fairness requires that plaintiff be afforded the due process standards of notice and opportunity to be effectively heard enumerated in Morrissey. It is clear that plaintiff was given none of these protections. He was never officially charged with some of the offenses which, cumulatively, led to his transfer. He was never given effective opportunity or assistance to present his case and was not given adequate

notice as to the reasons for the disposition.

Plaintiff is ordered returned to the work release program at Fishkill until such time as he is removed pursuant to the regulations and due process. All records of his unlawful transfer are ordered expunged.

Submit order on 5 days' notice.

Dated: New York, New York

September 19, 1975

CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. The committee did not pursue the charge that plaintiff had been involved in smuggling letters out of the prison. Plaintiff denied any knowledge of the matter. Two other inmates were subsequently found to have carried out the letters. (Tr. 95.)

2. Being placed on "hold" status means that an inmate is required to remain at the facility and is prevented from participating in the work release program until further notice. (Tr. 9-11.)

3. Only those inmates who are eligible for parole within one year are allowed to participate in the work release program. Plaintiff Snyder was eligible for parole within one year when he entered the program. Since his transfer plaintiff has been denied parole on at least two occasions. It is likely that the decision of the temporary release committee that plaintiff violated the regulations and his resultant transfer deprived plaintiff of an earlier parole which he would have otherwise been given.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES SNYDER, Plaintiff, -against- PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services, VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility, Defendants.	:	74 CIV. 5597

O R D E R

This cause having come on for argument on January 10, 1975 and an evidentiary hearing on May 15, 16, and 19, 1975 on plaintiff's motion for a preliminary injunction and defendants' motion to dismiss; and the court having consolidated sua sponte the trial of the case with the hearing on these motions; and the court having issued Findings of Fact and Conclusions of Law on September 19, 1975; it is hereby

ORDERED, that the defendants be, and are hereby, permanently enjoined from refusing to return plaintiff Snyder to the Work Release Program at

Fishkill Correctional Facility in which he participated from September 1973 to March 1974. It is further

ORDERED, that the defendants not remove plaintiff Snyder from the Work Release Program at Fishkill Correctional Facility, by reason of the alleged violations which gave rise to his removal in the instant case or for any previous or subsequent alleged violations, except in compliance with the procedures set forth in 7 N.Y.C.R.R. § 253 and current standards of due process as required by the Fourteenth Amendment to the United States Constitution. It is further

ORDERED, that defendants expunge all records of plaintiff Snyder's unlawful transfer from Fishkill Correctional Facility Work Release Program to Greenhaven Correctional Facility. It is further

ORDERED, that defendants' request for a stay of this order pending appeal be, and hereby is, denied.

Dated: New York, New York
October 20, 1975

S/
CONSTANCE BAKER MOTLEY
U. S. D. J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

CHARLES SNYDER,

Plaintiff,

-against-

PETER PREISER, individually and in his capacity as Commissioner, New York State Department of Correctional Services; VINCENT TURNELLO, individually and in his capacity as Superintendent of Fishkill Correctional Facility, and ROY BOMBARD, individually and in his capacity as Deputy Superintendent of Fishkill Correctional Facility,

Defendants.

NOTICE OF APPEAL

74 Civ. 5597

----------X

S I R S :

Notice is hereby given that defendants Peter Preiser, Vincent Turnello and Roy Bombard, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the District Court filed October 21, 1975 enjoining the defendants from refusing to return plaintiff to the Work Release Program and ordering defendants not to remove plaintiff from the programs except in compliance with the procedures set forth in 7 NYCRR § 253 and current standards of due process and ordering defendants to expunge all records of plaintiff's transfer from Fishkill Correctional Facility Work Release Program to Green Haven Correctional Facility and from each and every part thereof.

Dated: New York, New York
October 28, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
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Attorney for Defendants
By:

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Deputy Assistant Attorney General
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TO: JANE E. BLOOM, ESQ.
Mid-Hudson Valley Legal Services Project
50 Market Street
Poughkeepsie, New York 12601

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MARY KO , being duly sworn, deposes and says that She is employed in the office of the Attorney General of the State of New York, attorney for defendants-appellants herein. On the 24th day of December , 1975 , She served the annexed upon the following named person :

MS. JANE BLOOM
Attorney-at-Law
Mid-Hudson Valley Legal Services
50 Market Street
Poughkeepsie, N.Y.

Attorney in the within entitled action by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by her for that purpose.

Mary Ko

Sworn to before me this
24th day of December , 1975

David P. Bird

Deputy Assistant Attorney General
of the State of New York